DOCUMENT RESUME

ED 186 531 UD 020 494

AUTHOR	Larson, Meredith A.; And Others
TITLE	Finding the Common Denominator: The Capacity of State Agencies to Assist the HEW Office for Civil Rights.
INSTITUTION	Stanford Research Inst., Menlo Park, Calif. Educational Policy Research Center.
SPONS AGENCY	Department of Health, Education, and Welfare, Washington, D.C.
REPORT NO	SRI-RR-4537-27
PUB DATE	Sep 79
CONTRACT	300-76-0025
NOTE	170p.
EDRS PRICE	MF01/PC07 Plus Postage.
DESCRIPTORS	*Agency Cooperation; Civil Liberties; *Civil Rights; *Federal State Relationship; *Law Enforcement; Public Health; Social Services; *State Agencies; State Departments of Education; State Surveys
IDENTIFIERS	*Office for Civil Rights

ABSTRACT

This two part study was designed to determine whether working relationships can be expanded between the Office for Civil Rights (OCR) and various State agencies with similar missions. First, a survey of State laws and enforcement mechanisms identifies those States with current laws or policies similar to those that OCR administers. Results indicate that all but 11 States have specific or probable authority over such areas. The second part of the study explores the resources and capabilities of eight States in the area of civil rights. The scope and activities of each State's human rights commission, education agency, public health department and other human service agencies are described. The following conclusions are drawn: (1) agencies' willingness and capacity to work with OCR varies greatly; (2) many State human rights organizations are sophisticated and efficient; (3) several State education agencies operate strong civil rights programs that could be used to expand OCR's compliance review and monitoring functions; (4) State health departments are generally willing to undertake civil rights compliance or complaint handling activities; and (5) while civil rights programs exist in some other agencies, these are uncommon. A general conclusion is that though relationships with some State agencies could be expanded, attempts to impose uniform procedures are unlikely to succeed. (Author/GC)

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UD020494

FINDING THE COMMON DENOMINATOR:

The Capacity of State Agencies to Assist the HEW Office for Civil Rights

Research Report 4537-27

September 1979

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U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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Prepared for:
Department of Health, Education, and Welfare
Washington, D.C. 20202

Contract OEC 300-76-0025

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APR 4 1980

EXECUTIVE SUMMARY

The Office for Civil Rights is responsible for enforcing Federal antidiscrimination laws in the use of all monies distributed by the Department of Health, Education, and Welfare. Since the mid-1960s, the functions of OCR have expanded geometrically as the scope, coverage and specificity of the Federal laws and regulations have increased.

While efforts have been made to improve the organization and effectiveness of OCR national and regional offices, little has been done to utilize the capacity of State agencies with similar or overlapping civil rights missions. The current study was designed to determine whether working relationships could be expanded with some or all State agencies.

The study was carried out in two parts. One, a survey of State laws and enforcement mechanisms, was designed to identify those States that have current laws or policies similar to those that OCR administers--Title VI of the Civil Rights Act, Title IX of the Higher Education Amendments of 1972, and Section 504 of the Vocational Rehabilitation Act. Results of this survey indicate that 12 states have "specific" authorities very similar to the Federal laws, while another 27 have "probable" authority over similar areas.

The other part of the study explored the desire, resources, and capability of selected state agencies to perform various activities with OCR, and the prerequisites that might be necessary to establish such partnership relationships. Eight states with relatively good reputations in civil rights, but diverse organizations and problems, were chosen for intensive on-site study. In each of these States, discussions were held with officials from the State human rights commission (or its executive agency), the State educational agency, the department of public health, and various other agencies involved in the provision of human services. The experiences of OCR national and regional offices, and of a range of national interest groups were also explored.

Analysis of these discussions, and of the past experiences of OCR and other Federal agencies, was combined with information from the legal survey and from other current information sources. Together, they led us to the following conclusions:

- The willingness and capacity of agencies to work with OCR varies greatly, both within and among States. In general, however, agencies seemed more willing and able to cooperate than the attitudes of OCR officials had led us to expect.
- Many of the State human rights agencies we visited appeared to be sophisticated, efficient organizations. Several handled case loads of conciliations, investigations and enforcement duties that compare very favorably with OCR's own operations. OCR has virtually no current contacts with the human rights commissions, and appears to systematically underestimate their capabilities.
- Several State education agencies operate strong civil rights programs. These are potential resources that OCR could use to expand its compliance review and monitoring functions. However, there are often important differences in style that OCR does not recognize as legitimate.
- In general, State health departments are willing to undertake activities related to either complaint handling or compliance review for civil rights. These departments are often highly routinized, however, and require that OCR's needs and procedures be very clearly stated.
- While strong civil rights program exist in some other human service agencies (such as mental health, higher education, or welfare departments) these are the exception rather than the rule. Expansion here of OCR-type activities is therefore less immediately promising.

In general, then, it seems that relationships with some State agencies could be profitably expanded. However, in doing so, OCR will need to bear in mind several factors that could condition or limit its success. In the past, OCR's communications with State agencies have been largely confined to attempts to establish uniform methods of administration by which State agencies would operate Federal programs. Of necessity, such efforts have been designed to accommodate the lowest common denominator of State commitment to civil rights. Thus, OCR has approached these situations as enforcement tasks rather than as cooperative management ventures. This attitude, and an almost total lack of supportive technical assistance or clear policy guidance, has placed even the most cooperative State agencies in a defensive posture, and has created distorted impressions on both sides.

The results of both the legal survey and the site visits in the feasibility study indicate that attempts to impose uniform procedures on all States and agencies are likely to be no more successful in the future than they have been in the past. Therefore, we recommend that OCR consider the merits of reaching flexible agreements with those selected States and agencies that are willing and able to extend their Federally-related civil rights activities. Chapter VII of this report outlines a pilot program for six or eight States to explore the potentially mutual benefits of a Federal/State partnership based on confidence and teamwork rather than suspicion. Establishing such a program would require OCR to provide some funds and training to State agencies, and to clarify many of its own policies and criteria. These requirements are well within OCR's technical capacity, but will need to be given higher priority within the agency if such a program is planned.

Inevitably, many State agencies will be unwilling or unable to take greater responsibility for Federal goals. Thus, in the short run, at least OCR must continue to deal with these situations in more traditional ways. However, it appears that the time is appropriate for careful experimentation with more collegial agreements.

ACKNOWLEDGMENTS

The authors would like to extend their thanks to the dozens of Federal and State officials with whom we dealt in the course of this study. In recent years, the word "bureaucrat" has not enjoyed a very favorable place in the public vocabulary, and little trouble has been taken to differentiate individual civil servants from the system of which they are a part. The officials with whom we spoke and worked proved to be intelligent, hard-working men and women who shared their experience, data and opinions generously and candidly. While they sometimes differed among themselves over how the goals of civil rights might best be achieved, their commitment to reaching those common goals was beyond question. In the interest of maintaining important confidentialities, we cannot thank each of them by name. However, we would like to express to them collectively our professional debt and our sincere thanks.

CONTENTS

EXECUTIVE SUMMARY iii

ACKNOWLEDGMENTS vi

PART I: OVERVIEW AND GENERAL FINDINGS

I CONTEXT AND METHODOLOGY 3

- Background 3
- Method of Approach 7
- The Feasibility Study 8
- The Legal Survey 11

II OTHER FEDERAL AGENCY EXPERIENCE 15

- Office of Revenue Sharing 15
- Law Enforcement Assistance Agency 17
- Housing and Urban Development 19
- Equal Employment Opportunity Commission 22
- Comments 24

III THE OFFICE FOR CIVIL RIGHTS 27

- OCR National Office 27
- OCR Regional Offices 30

IV NATIONAL CIVIL RIGHTS INTEREST GROUPS 35

V STATE LAWS AND ENFORCEMENT MECHANISMS 41

- Overview 41
- Terminology Used 43
- State Law Authorities 44
- Protected Classifications 49
- Enforcement Agencies 50
- Enforcement Mechanisms 50
- A Typical Enforcement Scheme in a State with Specific Authority 52
- Summary 54

VI SUMMARY OF STATE AGENCY FINDINGS 55

- Human Rights Commissions 55
- State Educational Agencies 56
- Public Health Departments 58
- Human Development Agencies 60
- Findings Across States and State Agencies 61

VII CONCLUSIONS AND RECOMMENDATIONS 67

Recommendations for Program Design 70

PART II:
STATE BY STATE FINDINGS

INTRODUCTION 79

STATE ONE 81

State Laws and Enforcement Authority 81
Human Rights Commission 81
State Educational Agency 83
Public Health Department 85
Department of Public Welfare 87
Conclusions 88

STATE TWO 89

State Law and Enforcement Authority 89
Human Rights Commission 89
State Education Agency 91
Department of Social Services (Division of Health) 93
Higher Education Agency 95
General Comments and Conclusions 96

STATE THREE 99

State Laws and Enforcement Authority 99
Human Rights Commission 99
State Educational Agency 101
Health Department 104
Department of Mental Health 105
General Comments and Conclusions 107

STATE FOUR 109

State Laws and Enforcement Authority 109
Human Rights Commission (HRC) 110
State Department of Education 113
Department of Public Health 115
Department of Mental Health 117
General Comments and Conclusions 118

STATE FIVE 121

State Laws and Enforcement Authority 121
Human Rights Commission 121
State Education Agency 121
Department of Human Resources and Health Department 123
Higher Education Agency 126
General Comments and Conclusions 128

STATE SIX 131

State Laws and Enforcement Authority 131
Human Rights Commission 131
State Educational Agency 134
Health Department 137
Department of Mental Health 138
General Comments and Conclusions 138

STATE SEVEN 141

State Laws and Enforcement Authority 141
Human Rights Commission 141
State Department of Education 141
Health Department 143
General Comments and Conclusions 146

STATE EIGHT 147

State Laws and Enforcement Authority 147
Human Rights Commission 147
State Education Agency 150
Department of Public Health 152
Office of Vocational Rehabilitation 153
General Comments and Conclusions 154

APPENDIX: SUMMARY OF SURVEY OF STATE CIVIL RIGHTS LAWS AND ENFORCEMENT MECHANISMS GOVERNING STATE FUNDED SERVICES AND FACILITIES

PART I

OVERVIEW AND GENERAL FINDINGS

I CONTEXT AND METHODOLOGY

Background

In October 1978, the Educational Policy Research Center (EPRC) at SRI International undertook a study of State agency roles in civil rights activities. This assessment included the examination, to various degrees, of past State agency activities related to Federal laws, current State agency activities associated with State laws and policies, and the potential for increasing future involvement of State agencies in Federal civil rights activities.

Several circumstances made this an appropriate time to study and rethink the OCR/State agency relationship. The most important of these is the continuing expansion of OCR's responsibilities. When the HEW Office for Civil Rights was established following passage of the Civil Rights Act of 1964, it first focused nearly exclusively on problems of racial discrimination in education. Since that time, legal authorities, target groups, applicable respondent institutions, and OCR organizational structures have all expanded enormously. OCR is now responsible for preventing discrimination on the basis of race, national origin, sex, and handicapping condition throughout the entire range of HEW programs. Its authority stems from Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act.*

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*The first applications of Title VI in education were to promote school desegregation in the South. Court decisions bolstered HEW's authority to call for affirmative remedial action and to negotiate with districts and States to achieve compliance with Title VI. In 1970, OCR announced its intention to apply the "national origin" part of Title VI to secure protections of students who spoke limited English. In 1972, Congress passed Title IX (pertaining to sex discrimination) which was broadly patterned after Title VI, but with significant exceptions. In 1973, the Rehabilitation Act was passed. Sec. 504 of that act (pertaining

OCR must develop regulations for all the applicable statutes, enforce these regulations through compliance review and the investigation of complaints, and provide appropriate technical assistance to State and local agencies that are subject to those regulations.

The rapid expansion of responsibilities has caused predictable difficulties for OCR's own organization, the most pressing of which have been insufficient personnel and the consequent necessity of choosing among civil rights activities rather than moving steadily on all fronts.

Some progress has recently been made toward relieving the personnel shortage, allowing for several hundred new employees to augment both national and regional offices of OCR. To some extent, too, priorities among tasks have been at least temporarily set through the Adams court order.[†] Neither of these changes offers more than a temporary or partial solution to the problem, however. At best, the agency will be able to clear existing backlogs of complaints, establish orderly methods of staying abreast of the increasing number of complaints, and in any one year, perform a relatively limited number--relative to the number of recipients--of thorough compliance reviews. Even this degree of efficiency, however, falls far short of the level of coverage implied by the number of recipients and laws, particularly in terms of the number

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to discriminations against the handicapped) was also broadly patterned after Title VI but with some important differences.

On June 4, 1975, final regulations implementing Title IX were published. On April 29, 1976, Executive Order 11914 was published adding to Sec. 504 provisions making it more like Title VI in enforcement procedures and approach; final regulations implementing Sec. 504 were subsequently published on May 4, 1977.

[†] The Adams litigation, currently titled Adams v. Califano, was originally filed on behalf of the beneficiaries of Title VI protections in the 17 Southern states. The plaintiffs alleged lax enforcement of Title VI on the part of HEW's Office for Civil Rights (OCR). Later the Northern states were added, and related lawsuits were consolidated into a consent order. Basically, the order requires HEW/OCR to process complaints and conduct compliance reviews on a strict time schedule and to eliminate the complaint backlog.

of compliance reviews that can be done. Even if a staff large enough to provide that coverage could be established within the Office for Civil Rights, the wisdom of doing so is highly questionable. Thus, other methods need to be found to augment OCR's capacity.

A second circumstance leading to a reconsideration of State agency roles arises from OCR's role in employment-related discrimination problems. The Title VI statute specifically exempts from its coverage employment discrimination except where the primary purpose of the Federal assistance program is to provide employment (e.g., CETA). OCR's actions in faculty desegregation, hiring, promotions, and firing were originally held to be valid either because (1) faculty issues were so closely related to student education that they affected the services or benefits provided, or (2) the OCR's actions were necessary to remedy unconstitutional de jure segregation. When Title IX and Sec. 504 were passed, the employment exclusion was not part of either statute. Because of this, OCR perceived a Congressional intent that it was to handle employment issues in these areas (sex and handicap). Regulations were then published setting out OCR's role in employment cases. Several cases in Federal court have challenged this interpretation, and OCR has lost the majority of them at both the trial and appeals level. Thus, OCR's authority to handle all employment discrimination cases in these areas is seriously in doubt. State agencies, which often operate under no such limitations, could provide oversight of employment issues and of issues involving services to the beneficiaries, thus producing more comprehensive oversight.

State agencies are also a potential resource for helping OCR to cope with its problems. Many States have civil rights laws either explicitly or arguably comparable in scope to the Federal laws that OCR administers. (In fact, some State laws or policies provide broader or more detailed protections of the civil rights of certain groups of people than do the Federal authorities). This concurrence of Federal and State laws suggests a number of ways in which State agencies could assist the Federal efforts.

Although a direct agreement with State agencies to perform Federally related civil rights activities beyond some minimum legal requirement is a relatively new concept for OCR, other Federal agencies--such as the Equal Employment Opportunity Commission (EEOC)--make wide use of both formal and informal agreements with State agencies to perform a myriad of administrative, enforcement and assistance tasks. Typically, these agreements are part of the "package deal" between Federal agencies and State agencies for the operation of a particular program. On the whole, such arrangements have proven satisfactory to the agencies at both levels.

However, the fundamental OCR responsibility to protect individual civil rights imposes unusually high standards on any interagency arrangements. The human cost of errors--either administrative or judgmental--is often greater in the civil rights area than in any single Federal program. Thus, before any change is made in the network of responsibility, special efforts are needed to consider the potential risks and limitations. It was for this reason that OCR and the Office of the Assistant Secretary for Education requested that the EPRC conduct a study of the current activities of State agencies and the feasibility of some expansion of their roles vis-à-vis Federal laws. In particular, we were asked to provide information on the following questions:

(1) What are State agencies now doing to insure and/or enforce civil rights? Are their activities based on Federal authorities, State authorities, or both?

(2) What are the attitudes and experiences of other major stakeholders in civil rights with respect to State agencies?

(3) What contacts or relationships currently exist between State agencies and the Office for Civil Rights?

(4) What are the attitudes of State agency officials toward assuming more active roles vis-à-vis the Federal civil rights authorities?

(5) What roles show the greatest, or least, promise for expanded State activities? Are some areas of responsibility or activity more appropriate than others?

(6) What incentives or changes would be necessary to support State agencies in an expanded Federal role?

Answers to these questions would help OCR to assess the desirability of expanding the Federally related civil rights functions of State agencies, and the way(s) in which that might be done, should such a course of action appear desirable.

Method of Approach

The study posed two special problems that affected the methodology. The first problem arose from a lack of pertinent information. A feasibility study, by its nature, seeks to answer questions that have not been raised previously. Although existing information can often prove useful, it is frequently incomplete and may also be misleading, since it was inevitably collected with other purposes in mind. There is an abundance of data collected by OCR on the operations and composition of local agencies receiving HEW funds, but there is no corresponding body of information on the functions of OCR itself, or how various non-Federal agencies and actors interact with OCR or affect State level civil rights activities. Thus, our misgivings over the appropriateness of existing OCR data proved quickly to be a moot point.

In addition, and contrary to our expectations, there proved to be a dearth of systematic information regarding the current coverage of State civil rights law and policies, or their enforcement. Although attempts had been made in the past to compile information on selected aspects of civil rights programs,* none was sufficiently comprehensive or up-to-date to be of much help. The combined effect of these information problems was that much of what would ordinarily be regarded as "given" would have to be gleaned during the course of the project, extrapolated, or done without.

The second special methodology problem arose from the extremely compressed schedule of the study. The bulk of analysis had to be completed by February 1979. This posed critical problems for a study that must depend heavily on site visits and field interviews.

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*Center for National Policy Review, 1977.

Prior to the current study, one member of the project team had completed a somewhat similar effort on "The State Role in School Desegregation." The results of that work suggested strongly that (1) relatively few State educational agencies have both the capacity and the will to assist OCR in civil rights enforcement activities, and (2) local circumstances condition both the areas and the ways in which Federal-State partnership can be developed. These findings contributed two important premises to our study design. The first was that the concept of State agencies should be expanded to include not only those agencies that directly administer programs (the education agencies, health departments, etc.), but also those State agencies specifically charged with civil rights oversight (variously called Civil Rights Departments, Human Rights Commissions, or some similar term). The second premise was that scarce project time would not be wisely invested in determining which states were quite unlikely to expand their Federally related civil rights activities. Rather, most of the available time would be best spent on studying States potentially most willing and able to cooperate with OCR, and determining the factors most likely to help or hinder those relationships.

Based on the preceding considerations, the project was divided into two simultaneous studies. The main study was conducted by the project team at SRI International, who concentrated on assessing the feasibility of expanded OCR/State agency relationships. A second study was subcontracted to The Research Group of Charlottesville, Virginia, who surveyed the extent and use of State civil rights authorities. For the sake of convenience, these are referred to as "the feasibility study" and "the legal survey" respectively, and are discussed separately.

The Feasibility Study

A work plan was developed that combined elements of management analysis, legal analysis, and evaluative case studies. Consecutive cycles of interviews, analysis, and model revision focused on each of several groups having substantial interest in or influence upon the subject of the study. Those groups were:

- Other Federal agencies that use or have tried State relationships similar to those being contemplated with OCR
- The national office of OCR
- The regional offices of OCR
- Public interest and advocacy groups representing civil rights concerns
- State agency officials (and in some cases, representatives of their national associations).

The first step, clearly, was to determine the context at the Office for Civil Rights within which any expanded State agency relationship would need to operate. This included delineating OCR statutory responsibilities, the current organizational structure of OCR, the tasks performed by OCR (both in theory and in practice), and the division of these tasks among the national and regional offices of OCR. The SRI project team thus increased its understanding of the areas in which State agency cooperation was most necessary and most appropriate.*

The second step was to conduct interviews with officials of other Federal agencies that had made use of State agencies in a cooperative or contractual manner for purposes similar to those OCR contemplated. Approximately twenty-five people were interviewed during this phase of the project. Based on these discussions and on the information obtained about OCR operations, we developed descriptions of several hypothetical State agency roles. The elements of these roles varied according to such characteristics as: the locus of authority, level of staffing, degree of autonomy or cooperation required, and the task (or portion of a task) to be performed. These role descriptions were developed solely for the purpose of discussing the feasibility of various sorts of activity, not in order to assign any specific role to a specific agency.

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*An initial decision was made by the contract monitor that to use State agencies for purely technical assistance would not be a direct subject of this study. Although clearly relevant to OCR's general mandates and needs, and very likely agreeable to a large number of State agencies, the issues and opportunities surrounding technical assistance were sufficiently different from those posed by other OCR tasks to warrant a separate, subsequent study.

The next phase of the feasibility study combined the tasks of reviewing these roles and of selecting States and State agencies for intensive study. Information was sought from two major stakeholder groups: OCR regional officials and representatives of major civil rights interest groups. We reasoned that these groups would be experienced and knowledgeable about the relative capacity of individual States in civil rights matters, and would offer complementary perspectives on the desirability of attempting to expand State agency involvement in Federal civil rights activities. Approximately fifty interviews were conducted during this phase of the project. Following these discussions, the hypothetical State Agency roles were again revised, and fifteen States were identified as having a higher than average likelihood of positive response to greater Federal/State cooperation in civil rights matters.

From this list of fifteen States, nine were selected for intensive study: Massachusetts, Pennsylvania, Connecticut, Michigan, Illinois, Minnesota, Utah, Texas, and California. Bases for selection included: the findings of the previous SRI study of State roles in school desegregation; suggestions of previous interviewees; the previous record of States working with other Federal agencies in similar arrangements; and a rough attempt at distribution along geographical, urbanization and demographic dimensions. Pennsylvania was subsequently dropped from this sample because imminent changes in top level staffing following a gubernatorial election would have made obtaining accurate information extremely difficult.

In each of the remaining eight States, we interviewed between five and ten State personnel, including both appointees and civil servants but concentrating on the former. Typically we interviewed the Commissioner or Director of the Civil Rights agency; the Chief State School Officer; the head of the Title IV or Equal Educational Opportunity Office; various chiefs or officials from Public Health, Mental Health, Vocational Rehabilitation, Higher Education, and Welfare Departments; and a variety of individual officers and personnel to whom we were referred during the course of our State visits. In approximately fifty discussions, we met with a total of perhaps one hundred individuals.

In the final stage of the feasibility study, results of the State interviews were compared with each other and with interim conclusions based on interviews with other stakeholder groups. Our conclusions and recommendations were reviewed during an informal briefing on March 13, 1979 for personnel of several offices within the Department of Health, Education, and Welfare.

The Legal Survey

The Research Group conducted a survey and analysis of regulatory authorities in State funding and programs in the health, education and welfare, and human development areas--in other words, discriminations in access to and services under such programs within the State. Employment was excluded in order to concentrate on obtaining information about State laws and procedures of greatest relevance to OCR-type activities and concerns.

Two basic analytical tasks were accomplished in this survey. First, State regulatory jurisdiction over discrimination in funding and services was surveyed for the following protected classifications: race, national origin, color, religion, handicap, and sex. The objective was to establish the general parameters of State authority in that area. Second, State enforcement jurisdiction was surveyed to determine whether State programs (excluding employment) were extensive or limited. Both areas of analysis were chosen to provide initial information on the States' capability of providing enforcement assistance to OCR.

Because no previous comprehensive study of the same subject had been conducted, The Research Group designed a research method that would maximize the quantity of relevant legal information collected and would at the same time provide useful insight into statutory implementation policies.

For almost all states, one or more persons involved in the implementation of State civil rights laws were identified and interviewed. Questions were asked regarding statutory authority and enforcement policies, and citations were obtained for statutory authorities considered to be most relevant to our inquiry. The interviews were then supplemented by further research information derived from a review of the referenced statutes. Regulations were also reviewed in those instances that a State official forwarded regulations pursuant to our request.

Unanticipated problems were experienced in identifying persons within the State who were familiar with its discrimination authorities and policies. Other problems--including difficulties in analyzing widely varying legislative approaches among the states, and the problems of legal interpretation when new legal theories are attached to existing laws--were anticipated and resolved as well as possible.

The methodology tended, we believe, to produce a somewhat conservative estimate of the quantity and quality of State statutes and enforcement activities. That is, a comprehensive documentary search of all State statutes and organizations conceivably related to civil rights enforcement (apart from employment) would undoubtedly have produced a longer list, but would inevitably have included many authorities and programs that existed on paper only. Relying on initial interviews to direct the search increased our confidence that those authorities and organizations identified are genuinely active, while running a small risk of overlooking a few authorities and organizations not sufficiently renowned within the State to be familiar to the interviewees. Thus, while the legal survey cannot claim to be definitive, it is certainly adequate for the purposes of the overall study and represents a substantial improvement in both coverage and currency over any pre-existing materials.

The remaining sections of Part I describe the general results of the two parts of the study. Section II describes the experiences of various Federal agencies in establishing Federal/State working relationships. Section III discusses the experiences and attitudes toward State agencies of staff in OCR national and regional offices; some organizational factors that bear on planning are also touched upon. In Section IV, a brief account is given of the reactions of various civil rights interest groups to suggested changes in OCR's relationship with State agencies.

The condition of State laws and enforcement mechanisms related to civil rights is reviewed in Section V. Greater detail is presented in Appendix A. This is followed in Section VI by a discussion of the results of our interviews with State agency officials, arranged by type of agency. Finally, Section VII summarizes our conclusions and recommendations. Part II consists of State by State summaries of the interview phase, treating each agency separately.

II OTHER FEDERAL AGENCY EXPERIENCE

The second step of the feasibility study involved discussions with other Federal agencies that had attempted to work with State agencies in processing civil rights complaints and investigations. Four agencies were contacted: the Treasury Department's Office of Revenue Sharing (ORS), the Justice Department's Law Enforcement Assistance Administration (LEAA), the Department of Housing and Urban Development (HUD), and the Equal Employment Opportunity Commission (EEOC). Also, the U.S. Commission on Civil Rights (CCR) and the International Association of Official Human Rights Agencies (IAOHRA) were consulted for their views of State agency activities and effectiveness.

Office of Revenue Sharing

The ORS annually distributes revenue sharing funds to deal with community problems to 39,000 State and local governments. Section 122 of the State and Local Fiscal Assistance Act of 1972, updated in 1977, prohibits the use of Federal revenue sharing dollars in any program or activity that does not make employment services or benefits available to all persons on an equitable basis. The prohibition extends to both services and employment funded by revenue sharing and bars discrimination on grounds of race, color, national origin, sex, and--as amended in 1976--religion, age or handicapped status. This nondiscrimination clause, patterned after Title VI of the Civil Rights Act of 1964, specifies sanctions to be invoked when discrimination is found and voluntary compliance cannot be obtained. These sanctions include termination or withdrawal of funds and referral of cases to the U.S. Attorney General with recommendations that civil actions be initiated in the Federal courts, and authority for the Attorney General to bring a lawsuit where he believes there is a pattern and practice of discrimination. Both the threat of legal action and termination of funds have been used.

In 1975, the ORS civil rights compliance staff, to ease a workload which had grown too large, initiated efforts to enter into cooperative referral agreements with State civil rights agencies. The ORS approached civil rights agencies in the District of Columbia and each of thirty-five States that had Section 706 status with the EEOC to see if they could or would conduct a civil rights review. No other standards of selection were utilized. Thirteen memoranda of agreement were concluded in 1975 and another in 1976. The agreements are all substantially the same, with minor differences due to variations in State statutes. The language used in significant part calls for:

- ORS to provide information regularly "on all complaints received . . . alleging discrimination in the use of revenue sharing funds"
- The State agency to extend investigations to revenue sharing, and to inform ORS of its findings
- ORS to request the State agency to conduct a civil rights review within 30 to 90 days from the date of a referral, with "substantial weight" given to State agency determinations, although ORS is not to be bound thereby.

The agreements were carefully worded to avoid the appearance of a true "delegation" of authority and to ensure that ORS could maintain its own residue of power. If ORS accepted a State agency's investigation and/or findings, it proceeded with the mechanics of enforcement as if it had conducted the investigation. In essence, the State unit was to act as an investigative agent for ORS. In practice, the system did not prove very effective and less than ten actual referrals* were made to five States. The main reason cited for so few referrals was lack of funds available to the States to process complaints or conduct investigations.

In 1977 referrals/deferrals ceased because the new Revenue Sharing Act required complaints to be resolved within 90 days and State agencies were unable or unwilling to promise action within that time without reimbursement.

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*The system used by the agencies discussed here is frequently called "referral/deferral" because the Federal agency "refers" the complaint to a State agency and defers action on the complaint for some specified period.

Law Enforcement Assistance Agency

The LEAA, established in 1968 by the Omnibus Crime Control and Safe Streets Act, is responsible for enforcement of the civil rights provisions of Section 518(c) of that act, Section 262 of the Juvenile Justice and Delinquency Prevention Act of 1974, and Title VI of the Civil Rights Act of 1964, as each relates to services funded by LEAA. LEAA action funds are distributed annually in the form of block grants to establish State agencies to develop and implement State and local law enforcement plans.

Under Title VI, LEAA may withhold the granting or disbursement of funds when pre-award reviews indicate noncompliance and may also terminate through administrative proceedings existing LEAA disbursements. Under the Omnibus Crime Control Act, which reaches employment as well as services, sanctions are similar and perhaps stronger in terms of language suggesting mandatory, not discretionary, termination of funding. The former statute prohibits discrimination on the basis of race, color and national origin; the latter additionally prohibits religious and sex discrimination.

Each State, the District of Columbia and three Territories have created a State Planning Agency (SPA), an umbrella unit for sub-State-level law enforcement agencies receiving LEAA monies. SPAs designate at least one person as a civil rights officer to assure civil rights compliance in their own operations and those of lower-level grantees and contractors. The duties of the SPA, which include informing both funding recipients and the general public of their responsibilities and rights under the law and establishing some mechanism for forwarding civil rights complaints to LEAA, are set out in an LEAA manual.

Over the last several years the LEAA has attempted to develop a procedure to refer complaints and investigations to SPAs and/or State civil rights agencies.

The referral procedure proposal states that State Planning Agencies wishing to be selected as referral units, along with any human rights agencies to be used in the process, are to submit statements to the LEAA that they have the "capacity and willingness" to implement a civil rights program which includes complaint investigation and compliance reviews. They must also describe their available legal processes and enforcement powers, indicate where their resources might be deficient, and provide assurances that they will act in concert with the LEAA in its civil rights program. No other standards or criteria are set forth for assessing the capabilities of SPAs. If a State human rights agency also is involved, the agency must show:

- Jurisdiction over recipient governmental departments and agencies and political subdivisions
- Jurisdiction by statute or judicial construction to investigate, conciliate, and enforce inequity of services
- Authority to initiate formal investigations on its own, not subject to any restrictions by an affirmative vote requirement from commissioners prior to investigations or hearings, or to any limitations with respect to agency-initiated investigations of the State or political subdivisions
- Statutory or regulatory indication that officers of the State or locality (e.g., attorney general, head of labor) will remove themselves from the investigative and enforcement process and that separate legal counsel be provided the human rights commission when the State is charged with discrimination
- Willingness to promote the civil rights functions of the SPA and provide the support to overcome obstacles for effective compliance.

For various reasons, the proposed referral system has not been utilized. No SPA has yet been recognized as having the appropriate capability, and funds have not been available to reimburse State agencies for processing investigations and complaints. There is also a time limit imposed on the LEAA for resolving complaints, making it difficult to involve a State agency.

In some instances, however, the LEAA has deferred to a State civil rights agency when the State unit has investigated and is holding formal hearings on the same complaint. This avoids duplication of effort, although the LEAA is not necessarily bound by the State's findings.

Housing and Urban Development

The Department of Housing and Urban Development is responsible for enforcement of equal housing opportunity under Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and Executive Order 11063 (which prohibits discrimination in the sale or rental of all housing provided in whole or part with Federal funds, loans, or insurance).

Title VIII forbids discrimination in the rental, sale, or financing of housing on the basis of race, color, religion, sex or national origin. Coverage extends to all dwellings provided in whole or part with Federal grants, loans or loan insurance, as well as to most private housing. Title VIII, which specifically charges HUD with investigatory responsibilities, accounts for the bulk of housing complaints handled by HUD.

Under Title VIII, HUD has subpoena power and authority to investigate complaints. But the agency may negotiate only voluntary conciliation agreements; it has no power to issue cease-and-desist orders or otherwise force compliance. If HUD's investigation of a complaint reveals a pattern of discrimination it may refer the case to the Department of Justice for court action. If HUD is unable to effect satisfactory voluntary conciliation, or if 30 days have expired after the complaint is filed with HUD or since HUD referred the case to the Justice Department, the complainant may bring a civil suit for enforcement.

Section 810(c) of the Civil Rights Act requires the Secretary to refer housing complaints to State or local agencies where rights and remedies are "substantially equivalent" to those available under Federal law. Equivalency is determined by HUD's General Counsel and it may be conferred either by request or on HUD's own initiative.

For a State or local fair housing law to provide "substantially equivalent" rights and remedies for alleged discriminatory housing practices, the law or ordinance must:

- Provide for an administrative enforcement body to receive and process complaints
- Delegate to the administrative enforcement body comprehensive authority to investigate the allegations of complaints, and power to conciliate complaint matters
- Not place any excessive burdens on the complainant which might discourage the filing of complaints
- Not contain exemptions which substantially reduce the coverage of housing accommodations as compared to Section 803 of the Act, which provides coverage with respect to all dwellings except, under certain circumstances, single family homes sold or rented by the owner, and units in owner-occupied dwellings containing living quarters for no more than four families
- Be sufficiently comprehensive in its prohibitions so as to be an effective instrument in carrying out and achieving the intent and purposes of the Act, i.e., the prohibition of the following acts if they are based on discrimination because of race, color, religion, sex, or national origin:
  - Refusal to sell or rent
  - Refusal to negotiate for a sale or rental
  - Making a dwelling unavailable
  - Discriminating in terms, conditions, or privileges of sales or rental, or in the provisions of services or facilities
  - Advertising in a discriminatory manner
  - Falsely representing that a dwelling is not available for inspection, sale, or rental
  - Blockbusting
  - Discrimination in financing
  - Denying a person access to or membership or participation in multiple listing services, real estate brokers' organizations, or other services.

Noncoverage of sex discrimination or such areas as blockbusting and financing does not preclude recognition of equivalency nor does a lack of express provision for access to State or local courts.

HUD's referral procedure started in 1968 in twenty-eight States that had fair housing laws substantially equivalent to CRA, Title VIII. At that time, State statutes alone were the basis for an equivalency decision. In 1976, however, HUD withdrew all referrals, reportedly because they were unhappy with the backlog, delays and length of time State agencies took to investigate and resolve complaints. They also felt dissatisfied with the quality of work of many State agencies.

In December 1977, HUD promulgated new regulations which redefined equivalency in State laws and established the previously noted criteria for recognition. The new regulations also established the following performance standards for recognition of equivalency:

"(b) A State or local agency must:

(1) Consistently and affirmatively seek the elimination of all prohibited practices under its fair housing law;

(2) Consistently and affirmatively seek and obtain the type of relief designed to prevent recurrences of such practices;

(3) Establish a mechanism for monitoring compliance with any agreements or orders entered into or issued by the State or local agency to resolve discriminatory housing practices;

(4) Engage in comprehensive and thorough investigative activities; and

(5) Commence and complete the administrative processing of a complaint in a timely manner, i.e., the average complaint should, under ordinary circumstances, be investigated, and where applicable, set for conciliation, within 30-45 days."

Twenty-two States and the District of Columbia have been identified as having equivalent laws and meeting the criteria and to date eleven have signed a "Memorandum of Understanding." These memoranda are generally standardized, with some variation to allow for differences in State laws and procedures. A typical memorandum sets forth a time frame for State investigation, circumstances and procedures for recalling a complaint, reporting requirements, provisions for sharing information between agencies, and training and technical assistance requirements.

In FY 1978, 167 cases were referred to two of the States that had signed the memos. About half were resolved satisfactorily and in the other half HUD reasserted jurisdiction. By FY 1979, 134 cases have been referred so far to seven States and twenty-six have been recalled.

HUD feels, therefore, that the process is beginning to show promising results. They feel much better results could be achieved if they could reimburse State agencies, since many States are unable or unwilling to assist HUD without reimbursement. HUD has requested appropriations several times to reimburse State agencies, but so far Congress has not provided funds. HUD does have a line item in their FY 1980 budget for $3.7 million for State agency reimbursement and hopes Congress will approve it this time. The $3.7 million is based on an estimated case load and a cost per case based on previous experience.

Equal Employment Opportunity Commission

In contrast to the other Federal agencies, EEOC has an ongoing and effective complaint referral system. EEOC's basic authority stems from Title VII of the Civil Rights Act of 1964 as amended. Section 706 of the act requires EEOC to refer complaints to a State or local agency for resolution if that agency has an equivalent law.

The statute provides that where a State or local law prohibits an alleged unlawful employment practice and establishes or authorizes a State or local authority to grant or seek relief, EEOC is to take no action on the charge for 60 days after the proceedings have commenced in the State or local agency, or until the agency has earlier terminated its own proceedings. On the 61st day (121st day if the State law is new) EEOC, by statute, may invoke its power to investigate the charge to determine whether reasonable cause exists and begin its compliance-enforcement activity. (In practice, however, EEOC usually allows the State agency more than 60 days to try to resolve the case before becoming involved.)

The system described above requires that EEOC and the State agency jointly negotiate a worksharing agreement or contract. A typical agreement covers the purpose and the legal authorities involved, how charges will be accepted and processed and responsibilities assigned, and provides for exchange of information on resolution of charges.

A State agency which receives a deferred complaint from EEOC and chooses to investigate, in accordance with State rule, usually must file the charge or have it filed by the complainant under the State's law and procedure. The State unit approaches investigation, conciliation and enforcement not as an agent of EEOC, but as a separate administrative body. If the State unit receives the complaint initially, the complainant may be told of his or her Title VII rights and encouraged to file also with EEOC. In some States, the State-filed charge is transferred to an EEOC form and automatically forwarded to EEOC which then "defers" to the State. These methods of interchanging charges are known as "dual" or "joint" filings, designed to protect complainants' Federal rights and acknowledge the greater access and availability of State agency offices.

Title VII stipulates that EEOC find reasonable cause to support a charge before it attempts conciliation and, to aid this determination, EEOC "shall accord substantial weight to the final findings and orders made by State or local authorities" to which it defers.

State agencies are reimbursed for their efforts based on actual workload at a rate of $350 per case. There is no reimbursement for cases not resolved to EEOC's satisfaction or where EEOC has to invoke jurisdiction. State agencies may also be granted additional funds by EEOC to upgrade their capabilities (e.g., in-house training, installation of management information systems) through an "Agency Improvement Contract." EEOC may also provide technical assistance and training to a State agency staff directly. The funds for all this are a steadily increasing line item in the EEOC budget. In 1979 they amounted to $15 million, $600,000 of which was for State staff travel and expenses for training. In FY 1978, an additional $4.2 million was used for "Agency Improvement Contracts." The amount for this purpose for FY 1979 was not available at this writing.

Naturally, State agencies vary in capability, and despite continuous improvement, the EEOC monitors their efforts closely. There is a compliance manual detailing how cases shall be processed and establishing evaluation criteria for State agency performance. The EEOC reviews the State agency record on each case to see if it agrees with the adequacy of the investigation, findings and resolution. EEOC also requires State agencies to submit monthly performance reports on cases received, in process, resolved, and backlogged.

The percentage of referred cases in which EEOC accepts the State agency resolution varies between States from a low of 61 percent to a high of 100 percent. Nationally, the average is 85 percent. The biggest remaining problems involve delays in resolving cases and inadequacy of some investigations. To reduce the need for monitoring, EEOC is now developing a procedure to "certify" State agencies. The certifying procedure involves developing tough standards and a rigorous audit of a State agency's performance against these standards. Once a State agency is certified, EEOC will automatically accept its findings and confine monitoring to reports and occasional spot checks.

In brief, EEOC feels referrals of cases to State agencies is necessary and productive if certain conditions are met. These include:

- An equivalent State law
- State enforcement power
- State participation in developing the referral system
- Adequate State budget, organization and staff
- Staff commitment to civil rights enforcement
- Standards of performance for State agencies mutually accepted
- Procedural manuals or guides
- Provisions for technical assistance and training where necessary.

Comments

Our brief review of the efforts of Federal agencies to work with State agencies on civil rights issues is too limited to warrant any firm conclusions. However, some broad generalizations may be suggested.

First, the existence of a State law generally similar to the pertinent Federal statute is necessary but not altogether sufficient for establishing satisfactory relationships. Federal agencies that have begun their efforts by screening for such State laws have found it necessary to revise their requirements, adding certain "certification" criteria or adding greater specificity to State procedures.

Second, each Federal effort seems to have been more successful in some States than in others. This suggests that efforts which are selective and voluntary stand a better chance of success than those attempting to restructure relationships with all fifty states simultaneously.

Finally, States appear willing to cooperate with various Federal agencies, but are usually unable to be much help without adequate funding. When funds are sufficient and reliable (as in the case of EEOC referral/deferral cases) satisfaction is greater for all parties.

It was apparent during the course of our study that several Federal agencies have begun new efforts, within the last year, to explore and rethink cooperative arrangements with State agencies. Both Federal and State agencies seem to have learned something from past efforts, and are now seeking more realistic, successful agreements. If these new efforts are fruitful, State agencies could begin to play a much broader and more active role in the speedy resolution of Federal civil rights cases.

Unfortunately, there appears to be no effort among Federal agencies to coordinate their State-oriented civil rights initiatives. At the moment, this does not cause problems because the use of State agencies is actually very limited. However, we may anticipate that as a few States begin to work regularly with several Federal agencies simultaneously, differences among required procedures, criteria and reporting formats will becomes a more salient (and more aggravating) issue. A modest amount of foresight and cooperation among the Federal agencies could prevent, or at least reduce, these problems, particularly if State agency representatives are consulted early in the process.

III THE OFFICE FOR CIVIL RIGHTS

OCR National Office

Any assessment of how State agencies may be used more effectively by OCR must begin with a consideration of OCR itself and the record of its postures toward State agencies.* That record seems to be one of great inconsistency. In one sense, OCR has deliberately avoided dealing with State agencies in favor of dealing directly with local institutions. The language of Title VI of the Civil Rights Act gives little guidance on what role was intended for State agencies in its implementation. Title VI directs Federal agencies to take responsibility for compliance and enforcement in the financial assistance programs they administer, but no mention is made of required (or even allowable) State involvement. On the other hand, the so-called pinpoint provision† was included to protect against the invocation of Title VI "to withhold all Federal aid from a State which had an extensive pattern of discrimination".‡ The Congressional perception implicit in this action is that the States would be apathetic at best and resistant at worst. Indeed, the early use of Title VI to speed desegregation of Southern schools contributed to the perception that State agencies were not likely to be active participants in Title VI compliance activity. From this early experience, OCR settled on strategies that did not depend on the goodwill of State officials. As other areas of responsibility were added to OCR, this strategy was perpetuated, largely without serious reexamination, during the next decade and a half.

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*The current study was neither intended nor conducted as a management assessment of OCR. Such studies have been conducted frequently, both internally and independently. Our interest was only in considering factors--both attitudinal and organizational--that were likely to bear on the success of any future effort to involve States more actively.

†The so-called pinpoint provision requires that any action to cut off Federal funds be limited to the program or activity in which the discrimination was found and to the political entity or subdivision thereof found to be discriminating. Sec. 602 of Title VI, 42 USC 2000d--1.

‡L.R. Singer, ed., "Comment: Title VI of the Civil Rights Act of 1964--Implementation and Impact," George Washington Law Review, Vol. 36, p. 821 (May 1968).

Nevertheless, there have been a variety of OCR activities related to State agencies that are relevant to understanding any future prospects for Federal/State partnerships in civil rights. Most pertinent here is that portion of the Title VI regulation--Sec. 80.4 (b)(2)--which requires States to adopt "methods of administration" of Federal financial assistance programs that will assure that both the State agency "and all recipients of Federal financial assistance under such program(s) will comply with all requirements."

The standard methods-of-administration document (sometimes called a memorandum of understanding between the Federal and State governments) calls upon the States to undertake training and technical assistance, publicize the existence of the civil rights protections, establish and implement a complaint resolution process, and undertake monitoring of subrecipients and vendors subject to Title VI. Most Federal officials agree that this language enables OCR to require State agencies to perform certain activities, at least with respect to continuing programs administered by the States, but there is widespread controversy over both the general wisdom of doing so and the specifics of how it should be accomplished.

Although the methods-of-administration requirements in the regulations are usually referred to only in connection with health and human development agencies, they apply similarly to any other State agency administering a continuing program of Federal financial assistance. In 1968, OCR made a successful effort to obtain signed agreements with the head of every State educational agency specifying the SEA duties under this regulation. Since that time, however, no national effort has been made to use or enforce these agreements; their existence was unknown both to the majority of SEA personnel and many OCR officials we spoke with.

The methods of administration are often thought of as applying only to health and human development simply because it is in these areas that

OCR had for some time relied upon them.* For example, it was OCR policy for several years that regional office staff could selectively refer complaints in health and human development to the cognizant State program agency--deferring Federal action until the State had its chance to resolve the matter. Given the size of the pre-Adams backlogs, this practice frequently hastened attention to the complaint. In 1975, this practice was discontinued in substantial part because of conflicts with the Adams timetable. More generally, a 1974 policy decision was made to cease such emphasis as had been placed on the methods of administration in favor of concentrating on OCR's "own in-depth review of health and social service programs" (Holmes, P., quoted in Hamlin Memorandum 1978).

Our interviewees reflected the conclusions we found in the literature--that these State agency roles have never been stressed as a matter of policy and, with few exceptions, have produced only negligible effects on State agency (and OCR) practice. While we were offered numerous and varied opinions about the potential efficacy of the methods-of-administration approach, our respondents were generally in agreement that the system had never really gotten off the ground.

Officials at OCR were also generally of the opinion that such agreements in the education area were not utilized because State agencies were unwilling to accept the responsibilities that were implied. This explanation should be tempered, however, by the fact that after the initial effort to get the agreements signed, OCR provided no technical assistance to State agencies on how to comply procedurally with the methods-of-administration requirements. Whether this was due to lack of resources, disagreement over the effective meaning of the requirements, or poor communications within OCR and between OCR and the States is not clear. However, the lack of any supporting technical assistance must at least diffuse the blame for the subsequent dissatisfaction with State agency response.

There are indications that OCR again intends to increase pressure on State agencies to perform activities related to Federal laws and programs. New guidelines are being written in the health and human development areas that would add great specificity to the methods-of-administration requirements. Similarly, new guidelines released for vocational education programs during the course of this study call on State agencies to carry out broad compliance review activities. Apparently, however, these initiatives were not preceded by any systematic review of current State activities or capabilities, nor by any attempt to consult with State agencies during their development beyond the obligatory publishing of a Notice of Proposed Rule-Making. Neither does there appear to be any coordinated attempt to combine these requirements with a program of extensive technical assistance for State agencies, or resource sharing with the State agencies, even on a voluntary basis. Similarly, the regulations for both Title IX and Section 504 require designating a "responsible employee" to coordinate enforcement activities at the State level, but there has been little if any specification of either the duties or powers of these individuals.

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*B.E. Parmley, "State Agencies and Their Role in Federal Civil Rights Enforcements", Center for National Policy Review, Catholic University School of Law, Washington, D.C., (1977).

As all of the foregoing suggests, we encountered within the OCR national office a widespread lack of confidence in State agencies. They were believed to be indifferent or obstructive toward civil rights, at worst, and unknowledgeable at best. Little differentiation was made among States in this regard. Neither did OCR national personnel differentiate between State program agencies and State human rights agencies. To the extent that the latter were known to exist, they were assumed to be poorly staffed, token organizations dealing entirely with employment or housing discrimination and limited to complaint investigation activities.

Because OCR operations offer no opportunity for meaningful contact with State agencies, at least at the national level, OCR national officials cannot effectively test or revise their opinions.

OCR Regional Offices

OCR has offices in each of the ten DHEW regions (the division of Regional V activities between headquarters in both Chicago and

Cleveland creates, in effect, eleven OCR regional offices). It is in these offices that the bulk of OCR's business is conducted: complaints are reviewed and investigated, compliance reviews are conducted and, when possible, technical assistance is provided through this regional network. Cases in which OCR policy on a particular issue is as yet unclear are sent to the national office, and from time to time the national office may conduct additional investigations subsequent to regional efforts; however, these are only occasional and temporary departures from the general principle of conducting most activities through the regional offices.

While a certain isolation from State agencies is to be expected among the personnel of the national office, we anticipated that personnel of the regional offices would be far more knowledgeable about both State and local operations. We reasoned that the experience of regional officials would be our best source of information about which States had the strongest civil rights orientations, and which specific State agencies were the most effective. We expected that the regional officials would therefore be able to help us select States for intensive study, and would be able to refer us directly to the people in each State who were responsible for civil rights. What we encountered in interviews at the regional offices only partially supported these expectations.

On the positive side of the ledger, we found several officials who were knowledgeable about the State agencies within their regions. Some had productive, though informal, relationships with their State-level counterparts. In some cases, OCR regional officials had made creative use of the Federally funded (Title IV) State Technical Assistance Centers, located in both State agencies and local universities, as trusted liaisons among Federal, State and local interests, and as sources of technical assistance that the regional offices did not have the time or resources to provide.

In addition, we found that regional personnel, overall, held a well-balanced view of the several stakeholder groups in civil rights issues. They were, for example, more open to discussing potential changes in procedures and responsibilities than were some other groups of discussants, and they were more likely to suggest practical means of resolving familiar differences among the points of view of State and local agencies, interest groups, and aggrieved individuals.

However, we also found that even at best, the relationships between the regional OCR offices and the State agencies were poor. One source of difficulty was what is referred to as "policy communication." State agencies have a multitude of questions about what OCR policies are, and how these policies are to be interpreted in the specific situations they face. Regional officials can and do provide answers on the issues for which OCR policy is clear. But the OCR policymaking process at headquarters is such that many decisions are made only slowly and piecemeal, and there are many issues on which policies are "still under consideration" or have been described in a manner so ambiguous as to lend little clear guidance to either the regional offices or the State agencies. Inevitably, State agencies are inclined to ask for less and less guidance and also to form a poor impression of OCR regional office capabilities. On their side, the OCR personnel conclude that State agencies are uninterested in compliance and that the agencies' independent development of policies and procedures is an attempt to detour Federal ends.

Unfortunately, there are few occasions for contact between OCR and State officials that might improve these impressions. OCR regional personnel are often unable to provide technical assistance, guidance, or information owing to both the need for policy clarifications and the fact that there is little or no time to attend meetings or other functions where State and OCR regional personnel could discuss such problems. Thus, regional officials may meet their State agency counterparts only during crisis negotiations or enforcement actions when, necessarily, they tend to be in adversarial positions.

It is not always the case, however, that State and OCR regional officials meet even in the course of negotiations or enforcement actions. With only rare exceptions, there is no routine way for these OCR officials to inform the State agencies that complaints have been filed against local agencies within their jurisdiction, or that investigations were being conducted, or even that cases had been settled through negotiation.

There is a continuing paradox in OCR/State relationships. Although almost all OCR action is directed to local agencies--excluding the State agency even from information exchanges--OCR regional personnel indicated that they hesitate to involve State agencies in more active roles because "they are so often a party to the complaint." In practice, the State agency is joined as a party to enforcement proceedings only nominally, according to a staff member we spoke with in the Office of the General Counsel, DHEW. Unless the State agency has been actively culpable in the local instance of discrimination, its involvement in the proceeding is not as a "defendant." Rather, the purpose is to have the State agency joined in case a fund cutoff to the local agency is ordered--it is the State agency that must actually stop "writing the checks." Thus, it would seem that State agencies could be considerably more active in furthering Federal civil rights objectives without necessarily being in a direct conflict of interest.

In our interviews we found that OCR regional officials have, on the whole, a very uneven knowledge of the State agencies within their scope of work. Their familiarity with State civil rights statutes, regulations, or policies was generally poor, as was their knowledge of the regular operations of many of the State agencies. Since OCR actions are usually directed toward local agencies and are restricted to the implementation of Federal authorities, and since OCR policies are not required to accommodate the overlapping jurisdiction of State authorities, it is not surprising that regional officials do not concern themselves much with understanding State laws or policies. Nevertheless, since Federal and State civil rights laws often do not place precisely the same requirements on local agencies, their differences are not unimportant to the resolution of local problems.

The attitude of many OCR regional officials toward their counterparts in State human rights commissions is that the latter are ill-informed, politically unsophisticated and largely uncommitted to civil rights. It was surprising, therefore, that when regional officials were questioned on how they would recruit new employees to fill the new positions created by a recent approval to increase OCR's staff, a common answer was that the new personnel would be hired out of the State agencies where "they (the new hires) already understand the work and the problems."

Overall, we found that there are many contradictions in the position of OCR, both nationally and regionally. OCR operations neither create the necessity nor leave the time for dealing much with State agencies. Yet there are strong feelings about those agencies, feelings based on stereotyped impressions rather than recent experience. Limited experimentation with State agency contacts at both the national and regional levels have occurred, but on an ad hoc basis and not as part of any apparent strategy. Limited expectations about State agency competence are not dealt with constructively by either making selective use of organizations or providing the assistance necessary for broad improvements. Thus, the expectations of OCR regional staff become self-fulfilling prophecies.

IV NATIONAL CIVIL RIGHTS INTEREST GROUPS

An examination of the feasibility of any change in the relationship between OCR and various State agencies is incomplete unless the experiences and attitudes of the major civil rights interest groups are considered. The influence of these groups, both direct and indirect, does much to shape OCR policies. The response of the groups to new initiatives--favorable, negative, or neutral--would substantially affect the outcomes. Although time and budget constraints did not permit a thorough survey of interest groups, we nevertheless felt that it was imperative to interview at least the major national representatives of the several "protected classes" with which OCR deals. Therefore, we talked with representatives from the National Association for the Advancement of Colored People, the Lawyers' Committee on Civil Rights Under Law, the Project on Equal Educational Rights, the NOW Legal Defense Fund, La Raza, the Mexican-American Legal Defense and Education Fund, LULAC, the Council for Exceptional Children, the National Association for Retarded Citizens, and others.

As a general rule, the representatives of these groups favored concentrating civil rights efforts within OCR rather than sharing them with State agencies. Although the interest groups are aware of a number of operating problems that have troubled OCR, they felt it was preferable to deal with a single agency than to have to deal with 50 individual States. The view most frequently put forth by interest group representatives was that the States were, at best, a deadweight in civil rights enforcement and, at worst, a substantial hindrance to progress. This was perhaps most concisely expressed by one representative who simply said "It is the States that have always oppressed us."

Opposition to further involvement of State agencies turned on two points. The first was a perception that any across-the-board reliance on State mechanisms would severely reduce the effectiveness of civil rights compliance, because the "rules" would have to be devised to fit the lowest common denominator of State capacity and willingness. A typical response was an incredulous query, "Can you imagine trusting (name of State) to enforce civil rights?"

The second serious reservation arose from a deep concern over the OCR budget. Many interest group representatives believed that any support for expansion of State agency efforts would necessarily cause a reduction in the funds actually or potentially available to OCR for its own enforcement and compliance activities. In its most dogmatic form, this anxiety produced the stand that even if "new money" were made available through separate authorization from Congress, such a move would be a mistake because the same money "should have gone into OCR's regular work instead." This view of dollar trade-offs oversimplifies the departmental budgeting process. Often, funds available for one purpose are not equally available for another, either in the view of the Congressional committees or in the complicated process of agency budgeting.* In all likelihood, there are a number of ways in which modest support for an experimental expanded State agency effort could be produced without damaging either the present or future growth of OCR's own compliance and enforcement budgets.

To the extent that interest group representatives could imagine such circumstances, their resistance to expanded State roles was reduced. However, regardless of the validity of their perception of the trade-offs, opposition from the interest groups to State agency involvement is not irrelevant or easily satisfied. Whatever the budgetary reality, the fear that State activity would be a substitute for OCR activity is a political reality with which any future OCR planning must come to terms.

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*Specifically, the size of OCR's investigative staff is limited by a ceiling on the Federal staff positions assigned to OCR, and cannot be increased by any OCR decision to spend its special project funds on increasing its own staff. However, the efforts of State agency personnel contracted for with special project funds would not be counted in the ceiling on Federal employees. Therefore, contracts with State agencies to pursue Federally related civil rights activities could, in effect, augment rather than decrease OCR's total capability.

The aforementioned reservations should not be interpreted as a statement that the civil rights interest groups are unalterably opposed to making greater use of State agencies. Most of the groups recognize that their long term interests require civil rights protections and enforcements to be promoted throughout the entire intergovernmental system. This means that both OCR procedures and the interest groups themselves must gain institutional effectiveness at the State agency level. Interest group representatives are well aware that State budgets provide the major source of funding for almost all local program operations and that State agencies relationships with local agencies are sometimes more useful than the Federal/local relationship. For example, State agencies have the proximity and information necessary to systematically identify civil rights violations, and they not only control money but also the accreditation of local agencies, a powerful sanction.

Based on these perceptions, many of the interest group representatives expressed a rather hesitant approval of attempts to secure greater involvement of at least some State agencies. They are dubious both of the good faith of the States collectively and of the ability of OCR to manage a comprehensive system of State agency activities. They are particularly wary of any changes suggesting that OCR is "passing the buck." However, some States and agencies are recognized as more reliable than others. Most representatives were able to name individual States and/or agencies in which their particular concerns--for race, handicap, sex, etc.--were making progress. Thus, they felt that if States could be dealt with individually and if an appropriate monitoring system could be devised, there might be merit in reaching agreements with a few, selected States in order to produce more efficient handling of complaints, broader compliance review coverage, or "better" and more timely settlements.

Attitudes toward State agencies also varied according to the particular topic. Groups associated with race and particularly concerned about desegregation were the most resistant to the idea of more State agency involvement. This may result in part from past experience with many States in fostering _de jure_ segregation and the reactions of most States to demands for desegregation and school busing.

Groups concerned with discrimination against women and the handicapped were more open to State involvement. This may result, in part, from the fact that they routinely work with less overt, more subtle forms of discrimination, and therefore have themselves had to adopt strategies that relied more heavily on institutional cooperation. Coming more recently onto the national scene, the groups representing the concerns of women and handicapped citizens have quite simply had a different history, and may face a different political future than their predecessors. They are wary of State agencies, but open to further discussion.

Interest groups representing limited-English speaking and national origin minorities are somewhere in between. They appreciate that their target populations are concentrated in a few States and that special progress must be made there. They are also aware that as the target population expands and moves, the responses of individual State agencies will be critical. Preparing for these changes is thus an important part of their long term planning. Nevertheless, they are concerned about the good faith of many State agencies. While they are not altogether unwilling to experiment, they want firm reassurances that Federal activities will not be diminished.

The differences among the reactions of the various interest groups suggest that initial areas for expanded State activities, and initial participants, should be chosen carefully to encourage at least minimum trust among the stakeholder groups. OCR and the civil rights interest groups share many common interests: to avoid undermining OCR's stature and improve its effectiveness; to expand the network of effective civil rights protections; and to create an intergovernmental civil rights system that is complementary rather than competitive. With careful groundwork, these shared concerns could greatly strengthen an effort to secure more effective State agency activities.

V STATE LAWS AND ENFORCEMENT MECHANISMS

Overview

To supplement its findings from on-site interviews and study of the eight states, the EPRC arranged a limited survey of State civil rights laws in all the States.*

Specifically, we wanted to know the extent to which State laws currently deal with discriminations in the access to, and provision of, services to ultimate beneficiaries in the health, education, and welfare areas. We were particularly interested in identifying laws tied to State grants or other receipt of funds. In addition to the laws, we wanted to search out the legal authorities of each State for its agencies to undertake activities of the OCR-type, and the extent of the State's corresponding enforcement mechanisms. Although there have been prior surveys of State employment, housing, and related antidiscrimination laws, we could find no similar survey pertaining to the authority to deal with discriminations in access to, and participation in, government services.

In this "legal survey," a person (generally an attorney) who was responsible for or involved in enforcement activities was asked to identify the pertinent State laws. Following this, the laws that had been cited by our State contact(s) were reviewed for the purposes of clarification. The scope of this survey precluded a complete search of all possibly applicable laws and any extensive follow-up on differences between the contacts' perceptions of legal coverage and the language of the particular statute or regulations.

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*This exploratory survey was conducted for SRI by The Research Group, Inc. (TRG), under the direction of Mr. Perrin Quarles. This section is SRI's analysis and discussion of the data. Although the TRG project leader has reviewed our analysis, responsibility for the interpretations rests with the authors of this report.

While this approach may not have identified all relevant State law authorities,[*] it does result in (1) highlighting those laws that are most commonly used in the State, and (2) identifying nonstatutory authority that is or could be invoked to undertake these kinds of activities.

Of the multiplicity of State civil rights laws and enforcement program variants that might be thought of, the great majority exist. Our survey identified:

- States with explicit "Title VI-type"[†] authority.
- States with independent enforcement programs (not linked to Federal laws) without explicit authority.
- Heavily centralized programs and heavily decentralized programs operating under a single statute.
- Centralized and decentralized enforcement programs operating under several statutes.
- State enforcement programs operating concurrently with Federal efforts.
- State rules and procedures designed to effect compliance with Federal laws.

We also identified other variations and, in fact, we are not certain that all possibilities have been identified for several States.

Despite difficulties in acquiring the detailed information of interest, we were able to achieve a broad, highly informative overview of the range of State law authority to combat services discrimination in the health, education, and welfare areas. This section describes the terrain in some detail. After a note about terminology, we describe various aspects of State law authorities and then identify the States having specific State authority analogous to Title VI and related Federal statutes. The Appendix includes a detailed table showing the findings of this survey, by State. This Appendix includes all the items of State laws and enforcement programs discussed in this section.

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[*] Applicable civil rights laws are not always grouped together in the statute books, and various programs and agencies may have special provisions within their enabling laws or even operate on the basis of executive order.

[†] This term is a convention adopted for this study and includes sex and handicapped discrimination prohibitions. See following section.

Terminology Used

Since this part of the survey dealt specifically with the language and content of State civil rights laws, we must use somewhat technical legal language. To improve the readability of this section, we have adopted a number of conventions.

Our aim was to find out where State law gave authority to some agency to deal with discrimination in access to, and provision of, services to ultimate beneficiaries in various programs--particularly health, education, and welfare, and excluding employment. For convenience, we describe such a law, executive order, regulation, or official policy as a "Title VI-type law." This type includes prohibitions against discrimination on the basis of sex or handicapping condition even though these are not covered by Title VI of the Civil Rights Act of 1964 (OCR's authority in those areas comes from Title IX of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973, respectively).

We also speak of a State's "enforcement program" or "Title VI-type enforcement program." This convention refers to the set of mechanisms and procedures used to implement the nondiscrimination laws. It also indicates that there is some designated staff or agency to implement the mechanisms and procedures. A State is listed as having an enforcement program only if our contact(s) indicated that some activity along these lines is now occurring. Several State contacts said they would respond to any complaint; without more information, this is not included here as an "enforcement program."

Finally we use the term "probable authority" in cases where there is no specific Title VI-type law but there is another civil rights provision that could be interpreted to have a similar effect. For these states, we are unable to say to what extent the laws and enforcement programs are applied to the types of discrimination we are concerned with. We can say, however, that an enforcement mechanism is operable for the types of discrimination the law was originally intended to apply to (e.g., housing and public accommodations).

State Law Authorities

Types of Nondiscrimination Laws

Initially we wanted to know whether State law gave authority to some agency to deal with discrimination, particularly in health, education, and welfare programs. We were particularly interested in laws related to State funding for programs or general support in the three areas.

The survey revealed that the States can be classified into three groups: States with specific Title VI-type authority; those with probable authority; and States with no apparent authority (see Appendix). The number of States in each category are:

Specific Title VI-type authority	12
Probable authority	27
No apparent authority	11
Total	50

Of the 12 States we identified with specific Title VI-type authority, 10 had comprehensive provisions, that is, coverage of all Federally recognized recipient classes and of discrimination in health, education, and welfare services. The remaining two were limited either in class coverage (e.g., different types of coverage for race than for handicapped), area coverage (e.g., health but not education or welfare), or scope (e.g., coverage by State agencies and subdivisions but not private entities). Among the ten with comprehensive coverage, the provisions were generally tied to the receipt and use of State or local funding, to the manner in which services are provided, or to the use of public facilities. These authorities are generally statutes, although a couple of States act on the basis of executive order. One State has a statute virtually identical to the provisions of Title VI with respect to discriminations in programs receiving State financial assistance.

Besides the specific Title VI-type law itself, all twelve States have an accompanying enforcement program. They have some mechanism--beyond simply responding to any complaint--for identifying noncompliance and effecting compliance. (As already noted, our contacts were specifically asked if such a program existed and an answer such as "we respond to every complaint" was not counted.) From this we can tentatively conclude that some State effort is being expended to enforce these laws.

Of the eight states visited during the interview phase of this project, six are among the twelve identified as having specific Title VI-type authorities: all of these are comprehensive laws.

In most of the 27 States that are classified as having "probable authority," a provision was identified that prohibits discrimination in public accommodations. These public accommodations statutes are generally part of a statutory package passed to qualify for State/Federal agreements in non-HEW areas such as employment and housing.* The public accommodations sections were originally intended to prohibit refusals of services in restaurants, motels, and the like on racial grounds. However, the statutes we identified have been expanded to include other protected groups (women, the handicapped, the aged) and to include government or quasi-government institutions such as hospitals and schools within the meaning of "public accommodations." Our State contacts were asked whether the provisions would cover, for example, the manner in which services were provided to patients in a hospital. If our contact mentioned some authority for such an interpretation, the State was counted as having probable authority if this interpretation was consistent with our subsequent reading of the statute or regulation itself. Of the two States in the on-site interview sample without specific authority, both were classified as having probable authority.

It should be noted here that virtually all the States--and all with specific or probable authority as defined here--have laws pertaining to discrimination in employment. It is typically the case that a State agency charged with responsibilities for enforcing the Title VI-type statute will also have responsibilities with respect to employment discrimination. Consequently, in any given situation where issues of services discrimination are intertwined with those of employment discrimination, the relevant State agency would be empowered under State law to deal with both.

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*See Section II regarding agreements under Section 706 of Title VII, CRA between EEOC and State agencies.

Scope of State Law Authorities

In the legal survey, we explored, first, whether the law covered the health, education, and welfare areas; second, whether the law provided authority over specific types of discriminatory activity; and third, whether general State law contained any prohibitions against a State agency acting against other government agencies or private recipients of grants.

Table V-1 shows coverage of the relevant State laws in health, education, and welfare. Of the twelve States with specific authority, at least eleven provide coverage in all three areas (applicability to welfare programs could not be determined for Connecticut). For the States with probable authority, the coverage is nearly as extensive. Where this is not the case, the laws do not encompass either welfare or education--in no State are health care facilities flatly excluded. We conclude that State law is generally broad enough to address all three HEW areas of concern, although further inquiry is warranted, particularly in the welfare area.

Since we were unable to ask our respondents about every possible type of discriminatory action or remedial activity, we chose four items that we believed would give a good indication of the scope of the relevant State laws. These were whether the law would apply to subgrantees as well as grantees; facility siting decisions; private uses made of a public facility; and the power to order affirmative remedial action reaching beyond the injury done an individual complainant. The

Table V-1

STATE LAW COVERAGE OF HEALTH, WELFARE, AND EDUCATION PROGRAMS AND FACILITIES

State	Health Care Facilities	Welfare Programs	Educational Institutions and Programs
States With Specific Title VI-type Authority			
Alaska	Yes	Yes	Yes
California	Yes	Yes	Yes
Connecticut	Yes	Yes	Yes
Delaware	Yes	Probably	Probably
Massachusetts	Yes	Yes	Yes
Michigan	Yes	Yes	Yes
Minnesota	Yes	Yes	Yes
Montana	Yes	Yes	Yes
New York	Yes	Yes	Yes
Texas	Yes	Yes	Yes
Wisconsin	Yes	Probably	Yes
Wyoming	Yes	Yes	Yes
States With Probable Authority			
Alabama	Handicapped Only	Handicapped Only	Handicapped Only
Arizona	Yes	Yes	Probably
Colorado	Yes	Yes	Yes
Idaho	Probably	Probably	Yes
Illinois	Uncertain	Uncertain	Yes
Indiana	Yes	No	No
Iowa	NI	NI	NI
Kansas	Yes	No	Admissions Only
Kentucky	Yes	Yes	Yes
Maine	Yes	No	Uncertain
Missouri	Probably	Probably	Yes
Nebraska	Yes	Yes	No
Nevada	Yes	Yes	Yes
New Hampshire	Yes	Uncertain	Yes
New Jersey	Yes	NI	Yes
New Mexico	Yes	Yes	Yes
Ohio	Noncharitable Only	No	Profit-making Only
Oklahoma	Yes	Yes	Yes
Oregon	Yes	No	No
Pennsylvania	Yes	Yes	Yes
Rhode Island	Yes	Uncertain	Probably
South Dakota	Yes	Uncertain	Yes
Tennessee	Yes	Yes	Yes
Utah	Uncertain	Uncertain	Uncertain
Vermont	Yes	Uncertain	Yes
Washington	Yes	Uncertain	Yes
West Virginia	Probably	Probably	Probably

Source: Report of findings from Survey of State Laws conducted by TRC, Inc.

responses to these questions were as follows:

	Subgrantees	Facility Siting	Private Use of Public Facilities	Affirmative Remedial Action
States with specific authority (n=12)	10	8	10	9
States with probable authority (n=27)	6	18	5	21

Some of these responses were qualified ones. The nature of these qualifications is described in the Appendix.

Taken as a whole, the responses show that States with specific authority have a broad range of powers to take action against discrimination occurring in connection with the receipt of State grants or other funds. The powers in States with probable authority are much less extensive over subgrantees and the private use of public facilities,* but the majority of these States were reported to be empowered to deal with facility siting and to order affirmative remedial action.

Finally, we asked the respondents whether general State law contained any prohibition to prevent a State agency from taking action against various types of actual or potential grant recipients--State, local or private recipients of State grants; and State, local or private recipients of Federal grants. A detailed breakdown of the responses to these items is contained in the Appendix. Virtually all the respondents for the States with specific authority reported no limitations on taking action against any of these types of grantees. A few of the probable authority States restrict the prohibition of actions against other State agencies or municipalities, but the majority reported full or at least qualified jurisdiction over State and local agencies and private recipients of State grants. The responses with respect to grantees of Federal grants was more uneven. We speculate that there was some hesitation on the part of our contacts to say that the full weight of State law could be exercised where an activity was substantially Federally funded. This appears to reflect an uncertainty over the relative roles of Federal and State laws, particularly regarding the application of sanctions against funds.

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*Generally State civil rights laws grant jurisdiction over private entities of some minimum size. It appears to be somewhat easier to include these entities where the statute also grants jurisdiction expressly on the basis of the use of government funds or facilities.

Protected Classifications

Class coverage of the State laws is generally as broad as Federal law. Coverage by type of statute and class is shown below for those States with either specific or probable authority:

	Specific Authority (n=12)	Probable Authority (n=27)
Race, color, national origin, religion	12	26
Handicap	11	17
Sex	11	21

All of the "specific" or "probable" States proscribe discrimination on the basis of race, color, national origin, and religion. Of the twelve States with specific authority, one does not include the handicapped while another does not cover sex discrimination in two of the three statutes that form the specific authority we identified.

The laws of 29 states include the handicapped, although several of these laws were limited in the kinds of handicaps covered or did not include one of the three HEW areas. The laws of 33 States include sex discrimination; however, in several of these there are exceptions--some quite specific (e.g., "does not apply to restroom facilities") and others very general (e.g., "unless based on reasonable grounds"). In addition, both the TRG and the SRI on-site interview surveys identified cases where pending legislation would add sex or handicap discrimination to the laws' coverage. Overall, limitations on class coverage does not appear to be a significant obstacle to the use of State antidiscrimination laws.

Enforcement Agencies

Human rights commissions are the enforcement agencies most commonly designated in the Title VI-type State laws and enforcement programs we identified. Of the 39 states with "specific" or "probable" authority, the cognizant agencies identified were as follows:

	Specific Authority (n=12)	Probable Authority (n=27)
State human rights commissions	8	21
Attorney General	0	5
Program agencies	5	7
Local agencies	1	3
Other/unclear	0	2
Total enforcement agencies	15	36

A State-by-State breakdown appears in the Appendix.

In three of the "specific authority" States and eight of the "probable authority" States, more than one agency is designated as having enforcement responsibilities. The most common combination is a human rights commission (HRC) and the relevant program agency. It was not uncommon to find a division of practical responsibility in which the HRC is responsible for the resolution of specific cases, while the program agency was responsible for identifying discriminations, monitoring the compliance of local agencies or recipients, and initiating or referring instances of discrimination to the HRC.

Enforcement Mechanisms

Some of the questions in the legal survey part of our study were designed to determine which enforcement mechanisms were available under the relevant laws. (Note that the term laws is used here to include statutes and other sources of law such as an executive order or regulations for a general civil rights law.) For the States with "probable authority," the mechanisms are generally those used in the employment area that our respondents believed would also be applied should OCR-type activities be undertaken. Table V-2 lists the mechanisms discussed and the number of States indicating that these mechanisms were or would be available. (Definitions of the line items appear in the Appendix.)

Table V-2

ENFORCEMENT MECHANISMS UNDER STATE LAW

	States With Specific Authority (n=12)		States With Probable Authority (n=27)	
	Number	Percent	Number	Percent
Apprehension and Investigation				
Record-keeping	8	67%	2	7%
Self-monitoring	8	67	2	7
Pre-grant review	6	50	4	15
Compliance review	6	50	3	11
Post-enforcement monitoring	12	100	21	78
Complaints	12	100	27	100
Resolution				
Informal conciliation	7	58	22	81
Formal mediation	11	92	12	44
Hearings	12	100	21	78
Subpoena power	10	83	16	59
Sanctions				
Power to litigate	7	58	23	85
Grant suspension/termination	10	83	4	15
License suspension/termination	9	75	9	33
Blacklisting	7	58	3	11
Civil penalities	4	33	12	44
Criminal penalties	8	67	15	56

The table shows that complaints are the most common mechanism for identifying instances of discrimination, followed by some post-enforcement monitoring. For the twenty-seven States with probable authority, informal conciliation and hearings are the predominant means of resolving cases. The sanctions most frequently included in these States' laws were the power to bring lawsuits and to apply criminal penalties.

A somewhat different picture is presented if we consider only the twelve States with specific Title VI-type authority. They seem to have a broader range of apprehension and investigation devices available--over half listed all the devices (except compliance review, listed by 46% of the twelve states). Among these States, formal mediation is more prevalent than the informal conciliation mechanism. There seems to be a broader range of sanctions available among these twelve States. The incidence of States having the power to withhold funds or licenses or to "blacklist" (declare an agency or recipient ineligible for funding or recognition) is much greater than among the twenty-seven States with probable authority.

A Typical Enforcement Scheme in a State with Specific Authority

In order to summarize and highlight the common elements of State enforcement schemes among States with specific authority, this section describes a typical scheme. Important variations are noted where appropriate.

The State law generally prohibits discrimination in the use of State funds by entities connected in some way to the State government. Nondiscrimination clauses are likely to be required in public contracts, and services in the areas of health and education are often specifically covered. The welfare area is normally covered by the general terms of the statute. All Federally recognized classes are protected.

The human rights commission will have primary responsibility for enforcement although, as already noted, this may be shared by the particular program agencies or local agencies. The program agencies are often required to seek out and identify instances of discrimination in their programs, resolving them if possible. Problems that the agencies cannot resolve are to be referred to the HRC for enforcement action.

Surveillance over agencies is accomplished in a number of ways. Frequently, record-keeping or self-monitoring requirements produce classification profiles or other written information that can be used by the State agency to determine whether corrective action or guidance is necessary. About one-half of the twelve states with specific authority engage in some kind of compliance review. Virtually all conduct post-enforcement monitoring to determine whether there has been continuing compliance.

All the agencies are empowered to accept complaints. Most commonly, the complaints may be referred for formal mediation (informal conciliation as well in about half the States). If this fails, formal enforcement is commenced and the agency can subpoena persons and documents.

The sanctions available generally will include the power to litigate, to request criminal penalties, and the power to suspend or terminate grants or licenses (e.g., accreditation). If the HRC is the primary enforcement agency, it often does not have the power directly to suspend or terminate a grant. Rather, upon a determination that discrimination has occurred, HRC will transmit its findings to the program agency with a recommendation that funding be suspended or terminated.* Even where the HRC cannot order this action by a program agency, the agency is under a duty to do so--particularly where the relevant State law gives it affirmative responsibilities to prevent discrimination (in addition to the powers of the HRC).

In sum, the typical statute and enforcement mechanisms among the twelve states with specific authority involve all Federally recognized classifications and institutions of the type likely to be subject to Federal law by virtue of receiving financial assistance from HEW. These

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*Note that this is a system similar to that used by HEW. Once OCR brings a case through full enforcement proceedings to a funding termination order, the actual stoppage of funds must be effected by the relevant program agency.

States have added new laws or modified existing ones to cover services-type discrimination, indicating some level of commitment to the enterprise. The mechanisms available vary but generally seem to be suitable to collaboration with Federal efforts.

Summary

This "legal survey" revealed a surprisingly large body of State civil rights laws applicable to discrimination in the areas of health, education, and welfare. Twelve States were found to have specific Title VI-type statutes; twenty-seven others were found to have fairly extensive civil rights laws which (although not always passed with services discrimination in mind) are, or could probably be, applied in a similar fashion. Only in eleven States could we not identify either specific or probable authority. We believe that further investigation into the number, scope and content of State civil rights laws would reveal that there is even more State law authority of various types imbedded in enabling statutes and program rules.

We found that among the twelve States with specific antidiscrimination laws, enforcement mechanisms and procedures exist to implement these laws. In the States with probable authority, such mechanisms and procedures have been developed and are being applied with their laws to combat discriminations, particularly in employment and housing. Thus, even in this latter group of States, the legal structures designed to fight discrimination in other areas are potentially applicable in health, education, and welfare.

VI SUMMARY OF STATE AGENCY FINDINGS

The States in which we conducted intensive interviews were not, as we have previously explained, a random sample. Since we were interested in establishing the upper limits of feasibility, we deliberately sought out those States that, for one reason or another, seemed to hold particular promise for more than minimal involvement in Federal civil rights activities.

To set the data on the individual States in context, we describe here the several types of State agencies we contacted, and some commonalities across States. These general descriptions should help the reader to interpret the State difference encountered in Part II.

Human Rights Commissions

In six of the eight States we visited, there were separate Human Rights or Civil Rights Departments or Commissions. (We refer to all these agencies as Human Rights Commissions--HRCs--in this section.) These are established by State law--in one case by the State consitution--and are responsible for enforcing State civil rights laws through the mechanisms described in the previous chapter. All HRCs are independent in authority and funding of other State agencies. All but one had the authority to act on complaints brought within or against any other State agency, and most had the authority to act on complaints brought against private parties, whether or not the private organization received State funding.

We did not find the HRCs to be the docile, understaffed, amateur organizations that had been described to us in several interviews. Rather, the commissions impressed us as being well-established, experienced, autonomous, and competent organizations intent on doing a difficult job in an efficient manner. Their caseloads varied considerably, from several hundred to several thousand cases per year, and all but one

HRC handled cases under a referral contract with the Federal Equal Employment Opportunities Commission (EEOC). As a rule, HRCs were very concerned about handling and resolving cases in a timely fashion, and often had detailed management systems for doing so. Several of them had the authority to initiate independent actions (i.e., not in response to a citizen complaint) and engaged in activities similar to compliance review or, less frequently, pre-grant clearance.

As a rule, the heads of these departments reported that they felt their work was not undermined by State politics, and that they were not subject to deliberate underfunding by the State legislature for the purpose of curbing their activities. In the one HRC that did report apparent underfunding and limited (or at least ambiguous) authority, the staff had, as a consequence, developed negotiation skills that accomplished its goals--and judging from its caseload, satisfied its complainants--without seeming beleaguered.

Given that the size and reputation of the human rights commission was one of the bases on which States were selected for study, these positive impressions are not, perhaps, surprising. They were surprising, however, from the perspective of interviews with the previous stakeholder groups. The most likely explanation is that since OCR-type civil rights activities (as distinct from, say, EEOC) simply have no point of contact with these particular State agencies, there has been no occasion to assess them independently of the general reputation of States. We found, however, that although the HRCs at present deal mainly in the employment area, they had the skills and procedures needed to quickly expand their oversight to other areas.

State Educational Agencies

Among the several kinds of State program agencies, we found the Education Departments unquestionably to be the most sophisticated in terms of civil rights concerns. They were very aware of the variety of civil rights issues, recognizing concerns in discrimination associated with race, national origin, sex, and handicapping condition. This is, of course, partly a consequence of the fact that there are Federal (and State) categorical programs directed toward most of those target groups. However, it is also the case that there has been the greatest amount of attention paid to discrimination occurring in access to or delivery of educational services, regardless of the funding source.

Every State education agency (SEA) we visited had some office or bureau specifically designated to provide oversight on civil rights. In most cases this was an office funded partially or entirely by Title IV of the Civil Rights Act. These offices provide technical assistance to local educational agencies (LEAs) on how to comply with Federal and State civil rights requirements. In some cases, the SEA offices perform civil rights compliance and enforcement tasks under the authority of State law. When this is the case, these activities may be coordinated with CRA Title IV activities, though care is taken not to violate the terms of Title IV awards. In addition, Title IX and Sec. 504 coordinators are involved in various mixes of consciousness-raising, technical assistance, and compliance activities within SEAs. All of the SEAs carry out some regular schedule of school and/or district audits for the purpose of accreditation or program review, and these often include some review of civil rights status.

In general, we found that the selected SEAs we visited were quite active with respect to civil rights, although the methods they used did not necessarily mirror Federal strategies. Although there are clear exceptions, SEAs are likely to rely heavily on persuasion, indirect sanctions, and continued involvement. From their perspective, this strategy preserves the working relationship between them and the LEAs, and allows the SEAs to use the possibility of more drastic Federal actions (court orders or withholding of funds) to inspire districts to make their peace with the State agency. Opponents of this approach consider it "soft" and slow, allowing LEAs to drag their heels for years while they "try" to improve. Proponents consider this approach politically realistic, and no more time-consuming (and certainly less expensive) than spending years in the courts over each district. These differences in perspective and style are important, but should not be interpreted as indicating that any SEA felt that civil rights laws should not be fully implemented as quickly as possible. Nor do they indicate that SEAs are ultimately unwilling or unable to assist OCR and adopt more aggressive strategies. It does seem, however, that differences in preferred strategy will need to be recognized in any negotiation of activities with SEAs, should OCR wish to expand the current relationships.

Public Health Departments

The EPRC staff had considerably more difficulty locating and assessing civil rights activities in State health departments than in SEAs. As a rule, the commissioners or directors of these departments were less aware of civil rights activities within their organizations, and did not have the personal involvement that characterized the education chiefs. There was often no specific office whose title suggested that it had oversight on the type of access and delivery issues that OCR is most often concerned with. Thus, we were often referred to the Affirmative Action officer--who would be familiar with the EEOC but may never have heard of OCR. Only about midway through our State interviews did we discover that civil rights compliance issues were frequently handled by the Contract Compliance Office, a Deputy for Management, the Personnel Management Office, or a program office involved in a Federal program such as Medicaid. Subsequently, we had somewhat better success obtaining information; but our impressions are necessarily colored by the fact that in several States we did not talk to the "best source," and in all cases finding any source turned out to be problematic.

Generally, the civil rights activities we did find in the public health departments* appeared to be highly routinized. In one State, officials reported that they collected annual data using procedures and forms designed many years ago to comply with the "methods of administration" clause. This data collection continued despite the facts that current OCR contracts were minimal or nonexistent, and that regional OCR offices seemed to have little interest in the data. All of the State health departments reported that they conduct the required pre-grant civil rights review of new institutions applying for recognition under Medicare. Subsequently, most departments made only cursory reviews of the condition of civil rights compliance in these institutions (and, as the forms used were outdated, review for Sec. 504 compliance is not included). When specific civil rights complaints arose, they were generally referred to the State human rights commission for settlement or, less commonly, handled directly by the health department.

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*Aside, that is, from activities pertaining to Affirmative Action in employment, which was pervasive but not the subject of our study.

We occasionally encountered more systematic oversight of civil rights compliance among recipient institutions, and specific State health officials who were unusually well-versed on civil rights issues. These were, however, exceptions and seem to represent a new (and as yet small) wave of civil rights interest within health departments.

From representatives of this "new wave" we received several partial explanations for the apparently low level of civil rights involvement among public health departments. The first explanation arises from the circumstance that health agencies do not deal with the same kind of captive and universal client populations that education agencies serve. Instead, their clientele is largely self-selected, and are in contact with public health facilities or programs only intermittently or at a time of immediate health crisis. Specific complaints about discrimination are not likely to be frequent under these circumstances. Similarly, if some subpopulations receive fewer or different services, these subtler forms of discrimination are, by definition, unknown to almost all the people who are excluded. These factors appear to affect both State and Federal civil rights activities in the health area. It is interesting to note that complaints regarding discrimination in non-education agencies comprise only a very small portion of the OCR complaint load.

Another partial explanation for the apparently rather low level of civil rights activity within State health departments is the belief, strongly held among these agencies' personnel, that their own professional attitudes prevent discrimination. Health departments, it is said, have an "outreach philosophy" that directs their actions precisely toward meeting the needs of those members of the population who are least likely to have other resources. Thus, they reason, no special offices are needed.

Finally, the very routinization of those civil rights activities that we did encounter bespoke a more generalized attitude toward Federal requirements. The most important Federal programs of State health departments, Medicare and Medicaid, depend on Federal funding to a far greater extent than do State educational programs. As a result, the public health departments accept Federal requirements and Federal paperwork as omnipresent, inescapable facts of life. One requirement is very much like the next, and the proper response is to design a routine to deal with it. When instructed to add a new system, they usually do so without much complaint; unless specifically instructed to stop, the system remains indefinitely.

In combination, these factors may help to explain what is otherwise a paradox. Although State health departments were organizationally well suited and positively inclined toward civil rights activities (if at a less sophisticated level than found in SEAs), the current level of effort is relatively low. If OCR wishes to expand State agency activities in the health area, it is likely that the State departments will cooperate fairly well as long as the activities are chosen (and negotiated) carefully to suit the organizational context.

Human Development Agencies

We attempted to make some contact with State program agencies other than the HRCs, SEAs, and public health departments--but in a much less comprehensive manner. In each State, we visited at least one agency in the human development area, a rough grouping that includes higher education, mental health, welfare, vocational rehabilitation, preschool and child care, alcohol and drug abuse, and many other programs. Agencies associated with these programs receive and/or transmit large amounts of Federal money, but comprise only a very small fraction of OCR activity in either complaints or compliance review.

Every State agency we visited in this category had an Affirmative Action officer but beyond this, they had little familiarity with civil rights issues. Officials at all levels were often confused by the notion of discrimination in services or access, and we often had to provide several hypothetical examples before discussions could proceed. The majority of departmental officials said that they had never heard of any such cases, and were quite certain that their agencies did not have any special procedures for dealing with them. Should such a case arise, we were told, it would probably be referred to the State human rights commission if it could not be handled "in-house" by a program office. One outstanding counterexample must be noted, however. In a midwestern State, the Department of Mental Health ran a comprehensive and aggressive program of civil rights protection in every State operated facility. This Title VI program has been in operation for approximately five years, and appears to have the committed backing of the head of the agency. The vitality and stability of this program stood out sharply in contrast to the general lack of civil rights activities in the other human development agencies we visited. Its procedures could serve as a much needed model for similar efforts elsewhere, and could provide a starting point for OCR/State agency cooperation in the human development area.

Findings Across States and State Agencies

As the preceding discussion demonstrates, there are substantial differences among the various types of State agencies in our study, with respect to both their level of civil rights activity and the characteristics of the agencies themselves. Despite this diversity and the natural diversity among States, we found that several themes recurred throughout the agency interviews. These themes express some attitudes and conditions that have important implications for the feasibility of increasing OCR/State agency cooperation. Specifically:

- Almost every agency we contacted reported virtually no existing, regular contact with OCR offices either in Washington or in the regions. We were repeatedly told of agency attempts to establish greater contact with the regional offices. These attempts included suggestions for using joint OCR/State agency teams on compliance reviews, discussions about procedures for the handling of jointly filed complaints, requests that agencies be routinely "copied" on documents pertaining to OCR activities within the agencies' jurisdiction, and attempts to coordinate State requirements with those of the Federal authorities. Most agencies reported receiving no response to these overtures. The lack of any response may be due, in part, to the time demands of the Adams order or to the present reassessment of OCR policies toward State agencies, but State agency personnel frequently interpreted the lack as a sign of confusion, condescension, or indifference on the part of the regional offices.

  Exceptions to this pattern should be noted. In one SEA, an informal agreement had been worked out between the OCR regional office and the State Superintendent's office to communicate on any pertinent activities. A second SEA routinely received copies of pertinent OCR documents as part of a court settlement that required considerable SEA involvement in complaint and compliance review activities. The mental health agency with the unusual program referred to above appeared to have completely satisfactory relationships with the regional office.* These exceptional bright spots do not, however, repudiate the generalization that State agencies are virtually invisible to the OCR regional offices, even when State agencies make positive efforts to establish contact.

- Many State agencies are annoyed at the lack of any recognition by OCR of their agency's role as important and responsible actors in civil rights issues. Many operate under State civil rights laws that are highly detailed. Many (especially the HRCs) have responsibilities, goals and workloads as extensive as those of OCR. Indeed, State agencies often "share" the same civil rights cases, since complaints are often filed simultaneously with OCR and with one or more State agencies. In these cases, however, there is no formal opportunity to coordinate State and Federal investigations. In the worst cases, different settlements are made with the same local agency, or one level of government is excluded from negotiations altogether because the other has rushed into settlements without any attempt at coordination. Such situations underscore the need to align Federal and State policies on the identification of violations and the development of proper remedies. Unfortunately, the hard feelings that result from the current laissez-faire approach make the trust required for such alignment a scarce commodity.

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*Further investigation might have revealed other examples of modest cooperation, or at least communication. They would also, no doubt, have revealed additional examples of the lack of communication.

- State program agencies often experience some tension between their "facilitative" and "authoritative" roles toward the local agencies. A primary function of State program agencies is, obviously, to keep programs running smoothly. This means keeping the money flowing dependably and avoiding, solving, or (at worst) ignoring problems that might disrupt local agency activities. This is the function of State agencies that other civil rights stakeholders (OCR and the interest groups) see most clearly.

  At the same time, all State agencies have authoritative functions. This means enforcing a wide variety of laws and regulations, correcting wrongs, seeing that codes are abided by, and so on. State agencies would have a range of these State-imposed tasks whether or not there were any Federal programs operating, and are accustomed to the occasional unpleasantness that results from authoritative actions.

  With respect to civil rights and programs, these State agency roles must be integrated. Clearly, some agencies are more successful than others at doing this, and the State's political atmosphere influences the strategies that are chosen for performing the roles. In some cases the strength and disposition of the agency chief seems to be the key to the balance between these roles. Nevertheless, all agencies must develop some monitoring and enforcement skills if they are to remain at peace with the State legislatures.

  To the extent that HEW's own organization and procedures separate the distribution of program money from the enforcement of civil rights, State level integration of the facilitative and the authoritative functions is both more difficult and more necessary. Efforts within HEW to reduce at least the psychological separation of these functions would assuredly set a better example for State program agencies, and could be of value in supporting expanded civil rights activities among State agencies.

- Most of the agencies are under increasing financial strains. So far, moves such as Proposition 13 in California to limit State revenues have been most popular in western and Rocky Mountain States, but their threat extends over northern and eastern States as well. Each State agency that performs increased Federally related tasks faces budgetary opposition both internally (as State directed activities are discontinued to make room for Federally related tasks) and externally (as the budgets of other State agencies are reduced to make the required additional resources available).

  Our discussions with State agency leaders indicated clearly that most feel unable to take on additional Federal work beyond the minimum legal requirements without monetary compensation. Exactly what constitutes the minimum legal requirement remains unclear in some civil rights areas. But in many instances, the issue for State agencies is the practical question of who will pay for getting the job done. Money is not the only important incentive to greater State activity in civil rights, and for a few agencies it may be substantially less important than other motivations.* Nevertheless, it is one that would need to be dealt with in a future effort to expand cooperation. The experiences of other Federal agencies, such as HUD, LEAA, and ORS, clearly bear this out.

- Finally, many State officials are distressed that there is neither recognition nor positive reinforcement for improving civil rights. To them, OCR procedures often emphasize the minute documentation of past problems while ignoring even major progress. Those agency leaders who are committed to civil rights, and those agencies that have assumed State-related civil rights responsibilities, need to be able to prove to their own staffs, to local agencies, and to State budget makers that their work is useful and successful. Currently, Federal civil rights practices lend little support to this task, since they neither recognize progress nor distinguish between minimum and optimal State civil rights activity.

It might be recalled in this context that State agencies deal primarily with two types of Federal initiatives: formula grant programs and project grant programs. Under the first type, money is distributed to every State on the basis of a predetermined formula; only flagrant and repeated abuse will cause these monies to be interrupted, much less terminated. Under the second type of initiative, limited funds are distributed among States (and local agencies) according to competitive criteria; over time, good projects are rewarded by the continuation and expansion of their funding, while poor projects are reduced or replaced.

While Federal civil rights activities do not conform to either model, they do in some ways parallel the spirit of formula grant programs in that there are no distinctions drawn between the performance of State and local recipients. Nor has there been any attempt to reward State agencies for performing at a level beyond what is minimally required to comply with Federal law. The overall civil rights effort might profit from selectively adopting strategies closer in spirit to the project grant model, providing some recognition for those agencies that are particularly willing and able to undertake extended responsibilities.

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*There is also a second-order effect. A couple of States indicated opposition to receiving "more Federal money." Our perception is that this reflects a concern that money comes with a new set of "strings" attached that may, in turn, create new State budgetary demands.

Both the strengths and the needs of State agencies provide opportunities for OCR to create more productive relations than have thus far existed. It appears that at least a few, and perhaps many, State agencies are well prepared and quite willing to assist OCR in a variety of ways. However, that assistance will need to be obtained through a cooperative recognition of the capacities and limitations of both OCR and the State agencies. This recognition must extend beyond Federal/State differences to those differences among the States that are the subject of Part II of this report.

VII CONCLUSIONS AND RECOMMENDATIONS

The purpose of this study was to explore the feasibility of expanding the involvement of State human rights or program agencies in Federal civil rights activities. That feasibility is affected by both the history of OCR/State agency interactions and the current health of State civil rights activities.

The history of relationships between OCR and the State agencies does not provide a very firm foundation on which to build. For the greater part, there has simply been no relationship between the civil rights efforts of OCR and the State agencies concerned. OCR has dealt directly with local agencies, bypassing the State agencies and making few efforts to negotiate settlements that capitalize on State laws or capabilities. Infrequent attempts have been made to include State agencies by requiring them to adopt procedures to ensure local compliance, or by delegating to them some tasks that were temporarily of low priority to OCR. In these cases, OCR has provided only a minimum of technical assistance or guidance to the States, and no training to State staff. Neither has OCR provided adequate policy manuals that would allow States to know for certain what constituted a violation from OCR's perspective. For its own part, OCR usually has not closely monitored how States were performing these responsibilities. When those tasks assigned to State agencies assumed greater priority within OCR, or when the delegation of them to States was simply forgotten, OCR would take over again. Predictably, this situation has done little to add to OCR's knowledge of or confidence in State agencies.

Moreover, there has been great ambivalence within OCR as to whether State agencies are fundamentally "part of the civil rights problem or part of the solution." OCR's early concentration on school desegregation in formerly de jure States identified specific agencies as adversaries. Over time, this adversarial attitude has tended to be generalized to all agencies in all States. Thus, when attention is given to the question of the "proper" State agency role, efforts are often focused on closing perceived loopholes and devising procedures for obtaining State action built on coercive rather than cooperative models. Taken together, these historical patterns have offered few opportunities to develop the trust required for effective intergovernmental efforts.

Current civil rights activities at the State level present a much more encouraging picture: although their activities vary greatly in design and organizational location, a number of States have developed competent and effective oversight mechanisms based on State authorities that overlap and sometimes exceed Federal authority. Despite unhappiness over past experiences with OCR, State officials are generally willing to consider sharing or expanding some OCR activities. In large part, this willingness seems to result from confidence acquired through work performed for EEOC or for the State itself. Despite their isolation from Federal activities, State agencies have frequently developed substantial competence in carrying out both technical assistance and enforcement functions related to State civil rights statutes and regulations. Although they are often annoyed by what they consider to be OCR's condescending attitude, State agency officials are frequently willing to cooperate if a more collegial relationship can be created.

A major impetus for our study was the possibility that even at new staffing levels, OCR's rapidly expanding scope of responsibilities and the resulting caseload would soon outrun its capacity to perform its tasks in the most effective manner. Certainly, if this should be the case, several State agencies offer the experience and energy to supplement OCR's internal resources.

However, there are other, perhaps more important reasons for involving State agencies. Primary among these is the fact that the structure of civil rights protections in the United States is much more complicated than it was 25 years ago. Besides the expansion of Federal laws, States and localities have created a profusion of laws, policies, and agencies to define and protect the civil rights of their citizens. Some are more comprehensive or more effective than others; the wide variations in their substance and style are the natural concomitant of diversity among States. But to disregard them altogether and treat the Federal laws as if they were the only civil rights activities in existence is short sighted. Such an approach not only ignores real opportunities for complementary and mutually supportive actions, but also creates a level of confusion that undermines progress toward common goals.

Our examination of State civil rights laws and State agency activities in civil rights revealed a much more encouraging picture than we had been led to expect. Twelve States have extremely specific authority in civil rights broadly comparable to that of OCR at the Federal level, and twenty-seven other States have at least probable statutory authority for taking action against discrimination in both employment and services.

The State human rights commissions we visited appeared to be strong, competent and stable organizations with considerable experience in investigative and enforcement procedures. The single exception to this generalization was an HRC possessing unusual competence in mediation activities.

State educational agencies varied a great deal with respect to the activities they carried out and their preferred styles, but were generally cooperative and willing to undertake additional tasks if prerequisites could be met.

State health departments, although less sophisticated in civil rights matters, appeared to be committed to civil rights goals and offered strong organizational and procedural bases on which to build. State human development agencies had little experience with civil rights matters and appeared to offer fewer immediate possibilities, but outstanding exceptions were also noted.

In general, it seems safe to say that the capabilities of a number of State agencies have improved dramatically over the last decade. It is likely that this improvement has gone largely unnoticed at the Federal level, because current procedures call for very little contact with State agencies.

After examining the present condition of State civil rights activities, we conclude that OCR could successfully mount a limited pilot program for increasing State agency activities. Attitudes are certainly not going to be transformed overnight, nor is it likely that during the immediate future all or even most States will be in a position to participate. Indeed, any effort to force all States to engage in uniform civil rights activities would ignore at great peril differences among the States and their agencies in style, procedure and political culture--distinctions too fundamental to be swept aside by the proliferation of regulations and guidelines. Moreover, many States simply do not appear to have the capacity or the desire to become active in Federal civil rights activities, and are unlikely to take seriously any unilateral requirements established through OCR regulations.

Even were there no such barriers, OCR simply does not have the staff resources needed to provide adequate training, assistance, and policy and procedural guidance to all the States simultaneously. Therefore, even those States that would like to make a significant contribution to Federal civil rights objectives would be frustrated in their efforts.

Nonetheless, there are several States and agencies that appear ready, willing, and able to assist OCR in active and useful ways. We are convinced that there is sufficient promise to warrant both budgetary and programmatic planning, within the next 18 months, for a pilot program designed to increase participation in Federal civil rights activities by a small number of State agencies.

Recommendations for Program Design

While it would be premature to attempt to design a pilot program without additional exploration, EPRC's discussions and studies suggest a number of principles that should be carefully weighed if and when such a program is constructed.

(1) Any initiative aimed at expanding or redefining State agency roles in OCR activities should be undertaken and carried through with the active and equal participation of State agency representatives.

Sharing the design of any pilot program is essential because of two circumstances. First, any successful effort to involve State agencies must begin from the premise that OCR is dealing with peers, not subordinates. If cooperative intentions are demonstrated from the outset, they are likely to be credible later on. Second, the current isolation of OCR from State agencies means that few OCR officials have a sound working knowledge of State agencies. Without the information and experience of State agency officials, a pilot program would run a very high chance of incorporating in its design flaws that would prove to be fatal at later stages.

(2) Initial efforts should be confined to a small number of States and State agencies.

OCR is faced with a choice. It can continue to try to impose quality and uniformity on all States and agencies at once, or it can concentrate its efforts on assisting those States that will, under the right circumstances, make a significant contribution. OCR's historical tendency to choose the first approach has produced few positive and tangible results, apparently because such policies of necessity must be designed to fit the lowest common denominator of State achievement. We strongly suggest that the time has come to try the second alternative, and thus explore a much higher common denominator instead. Selective participation is essential to achieving cost-effective results of high quality. In addition, selective participation would greatly reduce accusations that OCR was "passing the buck." The criteria for selection will require special planning. Our studies suggest strongly that State laws are good initial indications of State civil rights capacities. However, by themselves, laws are inadequate and sometimes even misleading indicators of State commitment. At least during the first round of a pilot program, the self-selection of those States and agencies willing to participate should provide a large measure of quality control, regardless of the formal criteria that are used. A logical corollary of selective participation is the individual negotiation of activities and roles among States. Policies, organizational assets, and styles differ widely even among the "best" of State agencies. Maximum advantage can be taken of this diversity only if there is sufficient flexibility in a pilot program to reach different agreements with different agencies.

(3) Competition among participating States and State agencies should be minimized.

Initiating a pilot program would offer an opportunity to provide some positive reinforcement to those States and agencies with strong commitment and ability in civil rights protection. Thus, there is some utility in encouraging a certain amount of competition among States to participate in the program. Once participant States are selected, however, the emphasis should not be competitive (Is State A doing better than State B?) but rather instructive (Is this pilot program building useful skills, relationships, and lines of communication? Are civil rights objectives being advanced?). One independent purpose of the program should be to encourage cooperation and build trust, and this spirit will need to be apparent among the participating agencies as well as between the agencies and OCR.

(4) OCR should pay all or most of the bills.

At least during the pilot program, OCR should provide monetary reimbursements. A pilot program will necessarily have some costs associated with planning, negotiations, training, and evaluation. It is highly advisable and not unprecedented that OCR bear these costs entirely. A variety of mechanisms also exist for paying or sharing the direct costs of performing agreed-upon activities: grants, contracts, or cost sharing should all be explored. Few States will be willing or able to participate unless some such arrangement is made. Equally important, the provision of funds will be interpreted by States as a symbol of OCR's commitment to the program and of the value that is actually placed on State cooperation.

(5) The program should not be a single-year effort.

Several factors all point to the necessity of a multi-year program. First, there is a clear need to introduce some continuity into the pattern of OCR/State agency relationships. One common frustration of State agencies is that OCR policies appear to be constantly in flux. A program that appeared and disappeared in a single year would simply underscore this sense of indecisiveness and risk, rather than develop continuity. Second, the current lack of communication between OCR and State agencies is not going to be instantly remedied. Considerable learning will have to take place on both sides, and this simply takes time. A third and more technical consideration is that program evaluations based on a single year could provide information only on implementation processes, not the efficacy of the pilot program itself.

(6) The program should incorporate both independent and self-evaluation.

One message that was delivered quite clearly by our State interviewees was the need to establish clear criteria for identifying and remedying civil rights violations, and this need to know the basis for evaluating progress in civil rights must be generalized to a pilot program itself. Participants and managers of a pilot program will need to agree at the beginning of the program on general criteria for deciding its ultimate success or failure, and reassess the criteria periodically. In addition, an independent evaluation should be conducted that would be as free as possible of the political and organizational pressures that inevitably accompany such an experimental program.

(7) Some technical assistance and training will be required.

Although it is safe to assume that the State agencies participating in any pilot program would be experienced in activities similar to those undertaken with OCR, this will not obviate the need for some technical assistance, training, and policy and procedural guidance. This support should include State agency personnel as well as key contact personnel from OCR national and regional offices. Such joint training would establish a common ground of procedures, criteria, and interpretations and would also provide a forum for beginning to bridge the existing communications gaps. Although the OCR training facility in Denver is an obvious location for conducting such training, other sites may also be appropriate.

The preceding suggestions are the result of factors brought to our attention during the course of the feasibility study, and are by no means a thorough listing of the technical requirements of a pilot program. However, we are of the opinion that if all or most of these conditions could be met, and if OCR can approach the task with an eye to reducing antagonisms and frustrations that have arisen in the past, State agency response will be positive.

A variety of benefits could accrue to OCR through a more active use of selected State agencies. For example, until such time as there are definitive court rulings to determine the validity of current HEW regulations bearing on employment, OCR is severely constrained in its activities under Title IX and Section 504. Many State agencies, however, are capable of handling both employment and service issues, and of coordinating settlements and requirements in a way that is currently impossible for OCR. Such a use of State agencies would not only relieve a temporary administrative problem for OCR, but could lay the foundations for more comprehensive civil rights enforcement in the future.

Similarly, the creation of a truly inter-governmental effort in civil rights could help to achieve compliance and reduce discrimination in ways that OCR alone cannot accomplish. For example, compliance reviews serve a special purpose both in producing systemic remedies and in setting useful examples for similar agencies. Unfortunately, OCR has found it extremely difficult to conduct many compliance reviews in addition to the complaint and pre-grant review activities mandated by law or regulation. One of the most likely immediate consequences of greater State activities would be to expand the number, variety, and scope of compliance reviews conducted in any year.

Apart from such immediate advantages, the creation of a stronger OCR/State agency link would help to dispel the impression that civil rights is simply the concern of a few Washington zealots. It has been all too easy for opponents of civil rights to characterize OCR as an isolated agency imposing unrealistic and unnecessary remedies on helpless local agencies. The clear presence and cooperation of State agencies could go far towards producing a stronger and more positive image of civil rights in the nation.

If fundamental civil rights goals are ever to be achieved, they must be systematized in the most useful sense of that word: the creation of a thorough network of compatible policies that are incorporated and advanced in the everyday operations of all government levels. Such a systemization cannot occur overnight, nor can it be accomplished at the same pace in all parts of the nation. Building trust, learning intergovernmental communication, and coordinating policies all take time. States differ in their capacity, authority, organization, and inclination. Nevertheless, it appears that the time is opportune for better coordination and greater cooperation, and that actions taken now could begin to build the system for ensuring civil rights that both Federal and State agencies seek.

Part II

STATE BY STATE FINDINGS

INTRODUCTION

The following sections contain individual descriptions of the States and agencies visited during the course of the study. They are presented to give the reader a more detailed understanding of the capabilities and reactions encountered, and to allow the reader to judge the reasonableness of our general assessments.

Each State study begins with a brief summary of law(s) and enforcement authority pertaining to protecting civil rights in the delivery of services. The information in these summaries was drawn from the legal survey discussed in Section V. Since this information was not available to us during the site visits and interviews, we did not explore the extent to which specific agencies carry out the activities required or implied by law. However, the reader will be able to compare the provisions of State law with the activities of the various agencies described subsequently in each section.

Following the legal summary, each State agency we visited is presented separately. Attention is given to current activities, past and current relationships with OCR, an assessment of overall capability and commitment, opportunities for expanding relationships with OCR, and prerequisites specifically cited by agency officials during the interviews.

Finally, general conclusions and recommendations are made for each state. The level of OCR activities in each state during FY-78 is noted for purposes of comparison.

STATE ONE

State Laws and Enforcement Authority

State One has specific statutory authority and an enforcement program designed to address Title VI-related discrimination. The statute pertains to "public services" and labels discrimination in the access to, admission to, full utilization of, or benefit from any public services as an unfair practice. Public services are defined to include any public facility, department, agency, board or commission owned, operated or managed by or on behalf of the State or any of its political subdivisions. A separate section of the statute specifically includes educational institutions. All Federally protected groups are included in the statute's coverage. Primary enforcement authority lies with the human rights commission, and program agencies have the authority to terminate grants and contracts in instances of violation.

Human Rights Commission

General Description and Current Activities

A Human Rights Commission was first established in State One in the mid-1940s. It was expanded and reorganized several times before its current organization was set in 1967. The agency now has a staff of approximately sixty people, of whom about two-thirds are lawyers or trained professionals. The staff is roughly divided into two units, concerned with "enforcement" and "management, planning and information services." The enforcement unit is further divided into investigative units that average five to ten persons each. The agency handles about 1,200 cases annually, of which about 80 percent are related to employment discrimination. Enforcement activities include all the standard procedures plus a voluntary "no fault" period during which early conciliation is attempted (with the consequent withdrawal of the complaint).

The State One HRC does not seem to perform any functions similar to OCR compliance reviews. However, the agency does have a procedure that is broadly similar to OCR pre-grant reviews. Firms doing business with the State in excess of $2,000 per contract must apply for a certificate of compliance with State anti-discrimination standards. Approximately 1,400 such certifications are processed annually.

The State One HRC does not follow up or monitor all cases or settlements, but does run a special program to investigate charges of retaliation against any person who has previously filed a charge, testified or assisted the HRC with its investigations.

Past and Current Relationship with OCR

There has been only minimal contact between OCR and the State One HRC during the last several years. The agency has, however, worked with other Federal programs and departments, including HUD, ORS, LEAA and, of course, EEOC. These efforts have left the HRC with a certain wariness about the ability of Federal agencies to deliver on their promises (of money, solid criteria, coordination, etc.). Nevertheless, the HRC is willing to work toward constructing a better overall system of civil rights enforcement between Federal and State levels.

Opportunities for Greater Involvement in OCR Activities

HRC officials responded favorably to suggestions of expanded activities related to complaints. The agency would be willing to consider doing investigations, assisting in settlements or providing early resolution assistance. The HRC would prefer an arrangement, however, in which it worked on a referral/deferral basis with OCR and could therefore use all of its existing procedures with minimal modification or fragmentation.

As previously indicated, the HRC has relatively little experience in the conduct of on-site compliance reviews. However, officials were willing to experiment with a team approach using State and OCR investigators together.

Special interest was expressed in monitoring settlements, which could be done on the basis of either a random or nonrandom selection of cases. The HRC's experience with reprisal cases, described above, has made that agency particularly sensitive to the need for continued scrutiny of settled cases.

Prerequisites

Adequate funding is of special concern to this agency. HRC feels strongly that its State functions would lose both effectiveness and credibility if the existing staff were spread thinly over expanded Federal activities. Therefore, additional personnel would need to be funded by OCR. Officials also expressed an urgent need to align Federal and State criteria, so that the HRC would not appear to treat violations differently under apparently similar circumstances.

Overall Assessment of Capability and Commitment

We were impressed with the organization, balance and stability of the State One HRC. The agency has broad enforcement powers and a very strong reputation within the State. Although the new governor is somewhat more conservative than his predecessor, recent HRC appointments and budget decisions suggest that there will be no diminution of the HRC's powers or status.

State Educational Agency

General Description and Current Activities

The SEA in State One does not currently have a program for dealing with civil rights complaints. When complaints arise, they are referred to the HRC. However, the Equal Educational Opportunity Office runs a systematic monitoring program in the areas of desegregation, handicapping conditions, and sex discrimination. Assurance forms with an eighteen-point civil rights checklist are used for preliminary screening prior to approval of funds for special programs, and the SEA conducts periodic site visits and inspections to assure subsequent compliance. Funds from

Title IV are administered through the EEO office, which also provides various types of technical assistance. Officials there stated that the Federal insistence that Title IV monies not be used for enforcement activities was burdensome, and kept them from taking some desirable actions.

Past and Current Relationship with OCR

There is no effective contact between the regional OCR office (ROCR) and the State One SEA. Officials reported that OCR deals directly with local educational agencies (LEAs), and frequently fails to inform the SEA of complaints or settlements. They found that it was difficult to get written answers to questions, and said that verbal answers were frequently denied later, or changed. Lengthy delays by OCR in the disposition of LEA cases was another source of dissatisfaction. The interpretation placed by SEA officials on these events and other problems was that they reflected vague enforcement standards, unclear policies, and probably a lack of adequately trained personnel within OCR. To the extent that cooperation between the SEA and OCR could reduce or eliminate these problems, the SEA officials were ready to offer their services.

Opportunities for Greater Involvement in OCR Activities

SEA officials were willing to explore a variety of roles related to complaints lodged with OCR. Early complaint resolution was, in their opinion, worth experimenting with. Doing screening and fact finding for cases was acceptable, as was a full referral/deferral system.

The SEA was also flexible with respect to compliance reviews. The SEA is currently performing scheduled reviews for its own purposes, and could expand or alter its schedule to meet special OCR concerns. Similarly, pre-grant review activities for State programs could be expanded to include certain Federal programs. The department was amenable to discussing monitoring and follow-up activities related to previous case settlements.

Prerequisites

The SEA's broad willingness to cooperate was based on the presumption that four general prerequisites could be met. First, adequate monetary resources must be provided, along with means for training investigative personnel. Second, OCR criteria and ground rules must be made both clear and stable. Third, information needs to be freely shared between OCR and the SEA on all civil rights matters. Fourth, the SEA must be a full partner in developing a truly collaborative process for meeting both State and Federal ends.

Overall Assessment of Capabilitiy and Commitment

The State One SEA prides itself on having a progressive civil rights stance and will seek arrangements with the Federal government that recognize and aid that commitment. We were told by the chief State school officer (CSSO) that he considered civil rights a fundamental part of education in State One, and that enforcement is a fundamental part of SEA duties. The reappointment of this official by the new governor, and substantial increases to the State education budget, indicate firm political support for the State One SEA. Our overall assessment of morale and competence within the department was high.

Public Health Department

General Description and Current Activities

Civil rights are not considered a significant problem by the State One Health Department. There is, of course, an Affirmative Action office for the department itself, but employment-related complaints may also be referred to the HRC. A special office within the department handles complaints related to health care facilities, and officials estimated that less than six of the complaints handled annually by that office were related to civil rights. Officials suggested that local health services might seem a more logical place to make such complaints, and might therefore receive some, but they had no first-hand knowledge of whether this actually happened.

The State One Health Department performs an annual civil rights audit of 10 percent of its facilities, using a data form and questionnaire developed in cooperation with OCR many years ago. These audits are part of the department's methods of administration. State agency officials reported that the form had not been updated since it was first developed, and ROCR had made it clear that it did not want the generated data. Nevertheless, the audits are conducted annually and the results stored.

Past and Current Relationship with OCR

As the foregoing suggests, there is no current relationship with OCR. The State One Health Department has responded to OCR requirements in the past, and seems somewhat perplexed by OCR's apparent lack of current interest.

Opportunities for Greater Involvement with OCR Activities

Given the department's inexperience in complaint handling, and the relative infrequency of complaints in the health area generally, there seems little point in initiating such activities. However, an updated compliance review system, and/or activities in pre-grant review or monitoring would appear to fit well with current departmental auditing and licensing procedures.

Prerequisites

State One Health Department officials had only two requests: first, that they know exactly what had to be done, and by what standards; and second, that they not have to respond to different civil rights requests and standards emanating from several Federal departments or agencies simultaneously.

Overall Assessment of Capability and Commitment

Perhaps the most accurate way to describe this agency is "cooperative." The general attitude seems to be that they will fulfill requirements until told otherwise. Given the low level of current civil rights activities, however, there was little basis on which to judge departmental capability.

Department of Public Welfare

General Description and Current Activities

The State One Welfare Department has very little activity related to civil rights. When complaints arise, they are referred to the HRC. Subsequently, the Welfare Department will attempt to effect an early settlement by bringing the parties together, but does not act as a mediator during such meetings. If agreement is not reached, the HRC conducts an investigation, reaches a settlement, and enforces that settlement. The Welfare Department conducts a regular program of facilities review, but this review does not seem to have any specific civil rights emphasis.

Past and Current Relationship with OCR

The Welfare Department has had no formal or informal contacts with OCR.

Opportunities for Greater Involvement in OCR Activities

There appears little point in using the Welfare Department to deal with complaints, since they rarely occur and the department has no existing investigatory skills. A systematic civil rights oversight might be incorporated into their on-going program of facilities review.

Prerequisites

Welfare officials greatly desire a single, authoritative point of contact within OCR from which they could receive answers to policy questions. Establishing such a contact would be a necessary condition to expanding their activities, since they could not assist OCR without knowing for certain what the "rules of the game" are.

Overall Assessment of Capability and Commitment

The officials with whom we spoke are clearly committed to seeing that departmental activities meet high civil rights standards. However, the department has had relatively little experience in enforcement-type activities.

Conclusions

In FY-79, OCR completed the investigation of forty-six complaints in State One, but conducted no compliance reviews. The number of complaints is sufficiently low to indicate that it would not constitute a burden on either the State One HRC, or the SEA, were either agency to handle them through referral mechanisms. The lack of compliance reviews in this State probably reflects the opinion of the ROCR that other States in the same region took priority with respect to the limited number of compliance reviews that OCR could undertake, but both ROCR officials and State officials felt that increased compliance review activities were desirable, and several agencies within the State seem suitable for expanded activities of this type.

Among the State One agencies we visited, the HRC was clearly the most experienced in civil rights matters, and would be the most likely candidate for a broad range of expanded activities vis-à-vis OCR. The State Education Agency also expressed broad willingness to cooperate, and might be most useful in expanding the number or scope of civil rights compliance reviews. The Health Department appeared willing to be of assistance but generally lacking in experience and sophistication in civil rights issues. Officials in all State One agencies expressed the need for clarity regarding the standards of enforcement, and the need for appropriate funding.

STATE TWO

State Law and Enforcement Authority

State Two has no specific statutory provisions or independent enforcement program related to Title VI issues. A public accommodations statute could be applied to services-type discrimination, although the definition of public accommodations may not cover government facilities. Enforcement of the public accommodations statute is the responsibility of the State attorney general, who is empowered to act through conciliation and litigation.

Human Rights Commission

General Description and Current Activities

The HRC in State Two has a staff of four investigators and a director. It is an approved (Sec. 706) agency and thus receives complaints referred by EEOC and funding. The HRC handles 350 to 400 complaints per year and the director stated that the present staff is adequate for that case load. The agency's budget has increased from $30,000 to $130,000 over the three years since Sec. 706 certification.

The HRC is primarily involved with employment discrimination complaints. Complaints are investigated by the staff and recommendations made to the commission. Findings may be appealed to an administrative law judge, but commission findings are normally upheld. Each closed file is sent to the EEOC for review, and the HRC's rate of EEOC approval of their handling of complaints runs about 98 percent. Following the issuance of a compliance order, HRC monitors the case for one year to ensure the order is complied with and there has been no retaliation against the complainant.

HRC staff have worked with the State Two Title IX coordinator on complaints involving dual jurisdiction (Title IX and the State EEO law/ Title VII) in the employment area.

Overall Assessment of Capability and Commitment

The State Two HRC operates with a quiet and confident thoroughness that seems effective despite its apparently low visibility in the state. The agency is almost exclusively oriented toward complaint work, and expressed some hesitation in becoming involved in such activities as compliance reviews.

Past and Current Relationships with OCR

No formal or regular relationship exists between the HRC and OCR. The HRC reported its impression that OCR complaint investigations take longer than necessary and that there is a problem with the clarity and specificity of policies and criteria.

Opportunities for Greater Involvement in OCR Activities

The State Two HRC would consider extending its scope to include OCR-type activities. The agency's confidence in its methods of processing complaints leads it to prefer the referral/deferral system over other possible modes. Compliance reviews are not highly attractive to the HRC, which sees complaints resolution as its main function. Some officials voiced hesitation about establishing the HRC's authority to do compliance reviews and particularly its power to act in the education area.

Prerequisites

Funding was seen as a necessary prerequisite to HRC involvement. Interviewees also stressed that substantive training must accompany responsibilities. Some clear means of establishing the HRC's authority to act in Federal matters seemed to be another prerequisite, although not specified by HRC staff.

State Education Agency

General Description and Current Activities

The State Two SEA has very actively encouraged the ROCR to involve it in complaint investigations and compliance reviews for several years. As a result of this, ROCR now forwards copies of all paperwork about a State case to the SEA. This, in turn, has led to a semiformal referral system for complaints. The legal authority granted to the State by the ROCR is unclear. However, the ROCR provides information necessary for the SEA to commence an investigation, usually before ROCR is able to send out an investigation team. The ROCR has no similar arrangements with other SEAs in the region; the situation with State Two has developed only because of the SEA's desire to be involved in solving its own problems.

The State's Title IX coordinator (who also is involved in Sec. 504 compliance) is very active and highly respected in the agency and throughout the State. Her work combines technical assistance and limited enforcement roles. She reported finding the Federal separation of programs and civil rights, employment and nonemployment issues to be cumbersome, noting that as a practical matter the State agency must combine all these areas. The Title IV office is not very active beyond a technical assistance role, perhaps owing to the relatively small racial minority population in the State.

Overall Assessment of Capability and Commitment

The State Two SEA was recommended to us by the ROCR as a very good example of a capable agency. This impression was generally confirmed during our visit, but we found it hard to pin down the exact extent or location of SEA civil rights authority.

The State SEA is very interested in an expanded role in solving Federal civil rights problems in the State. This appears as much due to a desire to handle State problems locally as to an aggressive attitude toward civil rights concerns.

Past and Current Relationships with OCR

Relationships with the ROCR have been generally good. As a result of repeated SEA requests, a system of continuing communication and involvement of the SEA in ROCR's actions has been achieved. Existing problems seem to stem from the SEA's perception of a lack of clear policies and a good system for policy communication with the Washington D.C. OCR.

Opportunities for Greater Involvement in OCR Activities

It is clear that the SEA desires a much stronger role in both complaint and compliance review activities. All respondents felt that the SEA could handle a full referral/deferral system. Nonetheless, the SEA's hesitancy about enforcement could produce problems. At minimum a more extensive, formal role in the initial handling and investigation of complaints and in conciliation and mediation seems appropriate. SEA staff also expressed interest in expanded compliance review activities, although the placement of this responsibility and staffing for the function appeared problematic.

Prerequisites

The SEA's statement of prerequisites was terse. The SEA would require a chance to handle complaints or instances of noncompliance without initial interference from OCR. Greater flexibility on the part of OCR is necessary in light of the policy ambiguities pointed out by the SEA staff. Finally, the SEA seemed reticent to accept funds for an expanded role on principle, but recognized that extra resources would be required to adequately staff the functions.*

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*One respondent noted that, because of the State's current hiring freeze, additional staff might not be possible even with Federal assistance.

Department of Social Services (Division of Health)

General Description and Current Activities

The Department of Social Services is an umbrella organization which includes the Divisions of Health, Mental Health and Family Services. There is a Title VI coordinator for the overall department and a coordinator in the Division of Health whose primary responsibility is Title VI compliance in Federally assisted nursing homes. (We did not contact anyone in the mental health or family services divisions.)

The department Title VI coordinator handles complaints and compliance reviews for the entire agency. Her job includes collecting quarterly reports from each division within the agency, monitoring compliance review activities of the divisions, and serving as the second level for complaint conciliation (i.e., when the division staff cannot resolve a complaint, it is referred to her).

The Title VI coordinator in the Division of Health conducts inspections of nursing homes for civil rights compliance. He formerly handled complaints and did reviews in hospitals until it was learned that skilled care facilities were being handled by OCR (reportedly the headquarters office). He was then directed to stop work at skilled care facilities and spend more time at nursing home facilities. Although his job is formally limited to Title VI, he said that he checked informally for Sec. 504 compliance and evidence of sex discrimination. This coordinator reports to the department coordinator previously referred to.

Overall Assessment of Capability and Commitment

The department seems aware of Title VI-type discrimination problems, as evidenced by having established the coordinator position and underwritten the activities of the division coordinator responsible for nursing homes. However, a complete assessment of agency capability is difficult because activities seem centered around particular individuals. Their activities appear highly routine and somewhat less sophisticated than in some other agencies we visited. Responsibility for Sec. 504 compliance is unclear.

Past and Current Relationships with OCR

The department coordinator had only been at her job for six months. During that time she has never been contacted by any OCR staff. Her only contact was to seek advice in an effort to consolidate compliance review forms for employment and services discrimination. The OCR staff said they could not help her and did not know whether the consolidated form would require OCR approval.

In contrast, the health division coordinator has been at his job for several years and has developed a personal relationship with the director of the health and human development division at the ROCR. This ROCR staffer makes regular and frequent visits to the Health Division office, and site reviews of nursing homes are conducted together periodically.

Opportunities for Greater Involvement in OCR Activities

The personnel contacted seemed enthusiastic about taking on greater responsibilities both in complaint handling and compliance review. The complaint load is very light in these areas in the State, and adding the Federal caseload probably would not be a heavy burden (at least in the short run). An extension of oversight activities into skilled care facilities would clearly be an opportunity for involvement with OCR in the health area in State Two.

Prerequisites

State Two health officials have thus far had relatively light work loads in the civil rights area and have dealt primarily in areas where OCR policies have been relatively clear and stable. For these reasons, the staff we contacted did not have any strong feelings about prerequisites to greater involvement. However, training is clearly needed and, given the experience of the health division coordinator with respect to skilled care facilities, financial assistance to expand roles would appear to be needed.

Higher Education Agency

General Description and Current Activities

The HEA views its primary role as coordination rather than supervision of higher education institutions. Despite this, the HEA monitors affirmative action plans and activities in the State's higher education institutions, and civil rights problems are raised and addressed during budget hearings (a process somewhat analogous to a pre-grant review). A benefits program administered by the HEA is designed to help minority students attend and complete college.

Overall Assessment of Capability and Commitment

The HEA sees a need for more activism on its part in the area of civil rights, but is unclear about the appropriate manner of doing this. One high official talked about the HEA's general responsibility for effecting the spirit of the law, but had a less clear vision of specifics. Thus there is a desire to be more involved, but a lack of clarity about how to proceed.

Past and Current Relationships with OCR

The HEA reported virtually no contact with the OCR. The staff complained that OCR goes directly to institutions and the HEA does not see reports or letters of findings. One official pointed out they had no idea of the outcome of a major compliance review that had just been completed at one of the State institutions.

Opportunities for Greater Involvement in OCR Activities

The primary opportunities here would lie in one of the "helping" roles. The HEA expressed interest in having an officer who would interact regularly with civil rights counterparts in the local institutions and would maintain liaison with OCR. Higher education institutions in the State have active affirmative action offices that are presently handling Title IX complaints.

Prerequisites

One clear prerequisite was stated by HEA officials. They felt that if greater responsibility were to be given to the HEA, OCR should monitor the results or effects of their activity, rather than control the precise mode of operation. This was based on a strong feeling that State people know how to deal effectively with other State and local people, and that the real point was how the process turned out.

General Comments and Conclusions

During FY-79, OCR completed three case investigations for complaints in State Two, and conducted four compliance reviews. This relatively low level of activity may reflect a traditional caution on the part of Federal agencies when dealing with this State, or may be related to independent decisions that other States within the region had more pressing problems. Either of these factors is unlikely to change much in the near future, however, and they suggest that the use of State agencies may be the most promising way of obtaining more thorough coverage of civil rights issues within State Two.

Respondents in State Two spoke in favor of expanding State involvement in Federal civil rights activities. This desire appeared to be based primarily on a preference for handling local problems locally. Given the history of the SEA, a formal expansion of current activities would be in order, probably in roles such as early complaint resolution or mediation. Because of reticence to undertake ultimate enforcement activity, referral/deferral seems inappropriate. In the Department of Social Services, the relative lack of complaints and the existence of compliance review mechanisms makes an expansion of the review function the most likely role for consideration. For a number of reasons, including agency structure, a less active helping role would be most appropriate for the HEA.

The traditional distance between Federal and State functions in this State, and the apparent minimum of Statewide coordination of civil rights functions, suggests that optimum oversight and coverage will be a long time coming. However, the willingness of State agencies to undertake selected roles is a promising indicator of improvement.

STATE THREE

State Laws and Enforcement Authority

State Three has no specific statute which addresses discrimination in services delivery. However, there are several statutes intended to prevent discrimination generally that, according to a State official, could probably be applied. One statute requires the attorney general to take enforcement action for violations of the "laws relating to civil rights," another deals with facilities for the handicapped, and a third sets out criminal sanctions for discrimination in public accommodations and amusements. Our contact expressed doubt about the applicability of the public accommodations statute to schools and hospitals, and the scope of the attorney general's powers to enforce laws relating to civil rights is not clear. All Federally protected classes are protected under State laws, except the public accommodations statute, which does not include sex discrimination.

Human Rights Commission

General Description and Current Activities

The HRC in State Three was an anomaly among other State agencies in terms of size, budget, political context and method of approaching civil rights problems. The agency is relatively small. It has a staff of eighteen people and a budget of $482,000. Funding comes entirely from State sources, and includes no Federal services or special project money. In view of these factors, it is remarkable that the agency handles approximately 4,000 cases per year. Complaints covered the full spectrum of topics (employment, housing, consumer, education, public services, private businesses) and target groups (sex, race, national origin, religion, handicapping condition).

The HRC in State Three does not conduct independent investigations of complaints or perform any enforcement-related activities; neither does it accept referral/deferral cases from EEOC. Instead, the agency specializes in mediation, negotiation and technical assistance activities. It also carries on a broad and varied "outreach" program aimed primarily at helping both private and public sectors understand the nature of discrimination and develop methods of reducing discriminatory actions.

Despite its limited scope of action, comparison of the caseload and activity schedule to the staff size suggests that the agency is extremely adept at those functions it carries out, and our interviews underscored this impression.

Overall Assessment of Capability and Commitment

In some ways, the HRC in State Three is clearly a token agency. It has no enforcement powers and is severely hampered by regular budget cuts. These facts must be balanced, however, by the overwhelming impression of extreme capability and commitment in the HRC staff. Agency leadership is excellent, and over time the staff seems to have developed an approach to the mediation of difficult cases that fills a special need. Perhaps because the agency has no formal powers, it is treated as a trusted intermediary and has established a strong reputation for fairness, speed, and effectiveness.

Past and Current Relationship with OCR

No contact exists with either the national or regional offices of OCR, or with any other Federal agency. Indeed, since all the complaints handled by the HRC arrive directly, rather than as referrals from another agency, there seems to be a bare minimum of contact with other State agencies.

Opportunities for Greater Involvement in OCR Activities

Some possibility exists for making use of the HRC in early complaint resolution or in the mediation/negotiation stage of a complaint following formal investigation by the OCR or a State agency.

Prerequisites

Stable funding is the essential prerequisite for establishing a relationship between OCR and the State Three HRC. Perhaps because its immediate powers are so limited, the agency is particularly concerned with long-term goals and is extremely wary of one-year-only project funds. Some staff training is also essential, to familiarize HRC personnel with Federal procedures and goals, and this training would also need to be Federally funded.

State Educational Agency

The State Three SEA considers itself to be very active in civil rights and to have accomplished a steady trend toward desegregation in local school districts. State law details a strict percentage basis for determining desgregated status and does not require that either historical pattern or conscious intent be proven before remedies may be applied. As a result, little time need be spent in investigative stages.

A variety of mechanisms and approaches are used in State Three to further civil rights, but there is a clear preference for technical assistance and persuasion roles. The SEA has a large technical assistance budget, and may use experts from all over the country to develop plans and work with non-compliant districts. This technical assistance, we were told, is combined with efforts to bring LEAs to the point where they recognize their own problems and are willing to consider remedies without the disruptive necessity of litigation.

Some civil rights oversight is also provided by periodic accreditation review. Failure to meet the standards of this review can result in a district being put on probationary status for a year, after which State funding may be terminated if violations have not been corrected. Thus far, little use has been made of this mechanism, but State officials are considering a stronger civil rights emphasis in the review procedures.

Past and Current Relationship with OCR

The chief state school officer in State Three described relationships with OCR as productive, confused and destructive, simultaneously. Because State and Federal requirements for determining violations differ significantly (e.g., current status versus historical pattern or intent) there is little agreement on appropriate strategies or even on appropriate data collection. The SEA views OCR as secretive, insensitive to local factors, and condenscending. However, a recent attempt to establish informal communications, especially notification of OCR activities in the State, seems more successful than previous tries. The official also reported that on occasion, the SEA and OCR have worked well together to bring a district into compliance by coordinating the different State and Federal approaches, rather than using them in competition.

A current source of dissatisfaction exists over OCR's investigation of the desegregation status of the major city in State Three. The SEA has been excluded both from investigations and from access to any data or information regarding the case. SEA officials feel these actions reflect an inaccurate understanding of the State's civil rights commitment.

Opportunities for Greater Involvement in OCR Activities

Willingness to explore expanded or different activities with respect to OCR varied considerably among the SEA officials we spoke to. According to the CSSO, the ideal role is one of joint strategizing, consisting of first applying State methods, then calling in Federal assistance if and when districts resist State overtures or defend court suits. At that point the Federal clout would be welcomed. The SEA also feels it could make strong recommendations to OCR about districts in which to conduct compliance reviews.

More specifically, there is some interest in State Three in performing such roles as early complaint resolution and post-finding mediation that fit with the persuasion and technical assistance orientation of the State. Enforcement roles modeled after OCR's current procedures are not acceptable to State Three officials.

Some cooperation in compliance reviews also seems negotiable. Possible roles here include making recommendations to OCR about districts to review, conducting limited compliance reviews as part of the State accreditation review, or conducting monitoring of previous settlements through existing annual State data collections.

Data burden and data sharing is a keen source of distress in State Three. Every official we spoke with was frustrated by inaccessibility of abundant OCR data and the apparent lack of interest of OCR in relevant State data sources. There appear to be opportunities to improve both OCR and SEA civil rights activities if these data problems could be eased.

Prerequisites

The most important prerequisites for greater cooperation in State Three appear to be a recognition of the legitimacy of the SEA's more persuasion-oriented approach, and an assurance of full partnership in the development of strategies and data related to OCR activities in the State schools. Provision of funds from OCR was not cited as necessary. In fact, State officials seemed to much prefer having money for enforcement and compliance-related activities provided through specific Federal programs (for handicapped, bilingual, women, etc.) than receiving it from OCR. As the State would not be likely to take on OCR-type enforcement roles, no training in this area would be needed. However, greatly improved communications and a more relaxed and trusting atmosphere between SEA and OCR personnel is essential.

Overall Assessment of Capability and Commitment

The commitment of the CSSO in State Three to civil rights is beyond doubt, as is that of most of the other SEA officals interviewed. It is difficult to assess the extent to which this commitment translates into effective enforcement or steady progress toward Federal civil rights goals, due to the differences in style and statutory requirements between Federal and State levels. Our impression is that these stylistic differences have usually been interpreted by OCR as efforts to obstruct enforcement. If this interpretation could be altered, the State Three SEA would be one of OCR's firmest allies.

Health Department

The attitude of the State Three Health Department toward civil rights might best be described as cooperative but puzzled. As in some other States, we had to describe what might constitute a discrimination in access or service before the interview could proceed. We were then told by a high ranking official that he was quite sure no such complaints occurred. In the opinion of that official, however, the department was responsible for any discriminatory actions on the part of its vendors. Based on that premise, the official indicated that the department was willing to carry out a more active program, if the requirements of such a program were made clear.

Subsequently, we spoke with an official in the Personnel Management division who was more acquainted with civil rights issues. He reported that all local agencies were required to submit affirmative action plans and to establish procedures whereby patients could enter complaints (about civil rights or other matters). In his experience, however, such complaints were extremely rare. This, he said, was primarily because recipients were unaware of what type of actions constitute a violation of their civil rights and because so many public health programs were specifically designed with an outreach focus toward poor and minority groups.

Past and Current Relationship with OCR

Health officials with whom we spoke in State Three reported that they had no contact with OCR, although there appeared to be some active link with the Federal Public Health Service over issues related to Section 504.

Opportunities for Greater Involvement in OCR Activities

Despite the relative lack of experience and sophistication in civil rights matters, the State Three Health Department could offer a useful opportunity to expand OCR-related civil rights activities. Considering the relatively low level of complaints in this area, efforts would appear to be best invested in extending compliance reviews.

Prerequisites

Because the State Three Health Department lacks experience in civil rights oversight, OCR policies and criteria need to be clearly understood, and personnel trained to inspect against these criteria.

Overall Assessment of Capability and Commitment

The officials with whom we spoke sppeared to highly value civil rights, but recognized that oversight was not a current focus of department activities. This appeared to be due to institutional factors rather than obstructive attitudes.

Department of Mental Health*

This State Three department appears to be operating a full set of complaint and compliance review activities in accordance with the OCR methods of administration provisions and to be conducting referral/deferral investigations from OCR. The director of these civil rights activities reports directly to the director of the department, who seems to have a special concern for these issues. There is a civil rights officer in each jurisdictional region, and at each State-operated facility there is a civil rights committee and an "advocate" for complaints not strictly related to possible civil rights discrimination in service access or delivery.

When a complaint is entered through this system, the lead civil rights officer at a facility has five days in which to initiate an investigation, and thirty days in which to complete and report on the investigation. Any complaint alleging abuse is immediately forwarded to the State office. Copies of the report are sent to the State officer, the regional officer, and the superintendent of the facility. If the investigation reveals a civil rights violation, the State may do additional on-site investigation. A representative of the State then meets with the superintendent of the facility to agree on a remedial action. Complaints received through OCR are processed and investigated according to the same schedule.

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*In State Three, mental health concerns are one division of a larger department. We have identified it as a department for the sake of consistency of format only

All facilities receive an annual on-site civil rights review, and more frequent reviews may be held if complaints warrant. A report of this review is forwarded to the facility superintendent, who may then respond in writing to any violations that have been uncovered. A settlement is then negotiated, including a stated period for achieving compliance and a follow-up review.

Past and Current Relationship with OCR

The system described above was initiated several years ago as a result of a statewide OCR compliance review. There are regular contacts between this State Three agency and the regional OCR office. This agency was among those recommended to us by the regional office for study.

Opportunities for Greater Involvement in OCR Activities

Officials in this agency would like to apply the same system of Federally related civil rights activities to the oversight of private mental health facilities. This cannot be done on current budgets, however, and OCR support would be welcomed. This agency's system could also be used by OCR as an exemplary program to assist in training other State agencies to work with OCR.

Prerequisites

Funding would be required if this State Three agency were to expand its current efforts or to assist other states with OCR procedures.

Overall Assessment of Capability and Commitment

As the previous discussion suggests, we were extremely impressed with this agency's civil rights oversight system and the competence of the staff with whom we spoke. Leadership and budget appear to be extremely stable and backed by the personal commitment of the department director.

General Comments and Conclusions

During FY-79, OCR conducted forty compliance reviews in State Three. Although this is an unusually high level of activity, for OCR, much more could be accomplished through the use of State agencies. State Three is a particularly good example of the diversity of approaches to civil rights that may be found within a single state. The HRC faces serious limitations in staff, budget and authority, but appears to be remarkably effective at those activities it undertakes. The SEA seems to be highly committed to pursuing civil rights through a low-profile, persuasive approach. The Health Department appeared to be cooperative, but to have relatively little experience in civil rights matters. Finally, the Mental Health Department revealed a full-scale civil rights operation in accordance with the OCR methods of administration. Thus there appear to be abundant opportunities for making use of State Three agencies to promote Federal civil rights interests. It is equally clear, however, that OCR must be flexible in its approach to individual agencies.

STATE FOUR

State Laws and Enforcement Authority

State Four has had specific statutory authority to enforce civil rights for over thirty-five years. One law, enacted in 1868, required public schools to serve all children without discrimination on account of race or color. Its original statutes have been continuously updated and expanded so that they presently prohibit discrimination on the basis of race, color, religion, age, sex, national origin, ancestry, physical disability or marital status. They apply to employment, public accommodations, housing, credit transactions, state contractors, and all public services. Enforcement is the responsibility of each State agency and the State Commission on Human Rights. In practice, most of the program agencies refer action to the Commission on Human Rights for investigation and resolution. The Commission may hold hearings, issue cease-and-desist orders, require specific remedies and petition the courts for enforcement orders when necessary.

A "Code of Fair Practices" was established by Executive Order in 1967 to be specifically observed by all State agencies and officials and prohibiting discrimination in their own employment practices and provision of assistance and services. The code further requires agencies to cooperate fully with the Commission on Human Rights and to report to the Governor annually on their implementing activities.

Additionally, to provide a uniform State policy on civil rights and to insure coordination among all State agencies, in 1967 the State legislature established an Executive Committee on Human Rights and Opportunities. The Executive Committee includes the Governor, Lieutenant Governor, Secretary of State, Treasurer, Comptroller, the Attorney General and up to fifteen other officials of the executive branch appointed by the governor. The Human Rights Commission is secretariat to the Executive Committee.

Human Rights Commission (HRC)

General Description and Current Activities

The HRC in State Four was established by State statute in 1943 to investigate equal employment opportunities and to compile facts on discrimination in employment, violation of civil liberties and other related matters. Since then its scope, responsibilities and authority have been continuously enlarged until today its jursidiction covers all the areas noted above. The HRC consists of twelve members appointed by the governor, a director appointed by the commissioner and a staff selected by the director under the State merit system. The HRC has a staff of 116 employees in its headquarters and four district offices, and its annual budget approximates $1.25 million. Approximately $160,000 of the budget represents funds from the EEOC as reimbursement for processing Federal cases regarding employment discrimination. The rest of the budget is State funded.

The Commission has responsibility for administering the following State statutes on anti-discrimination:

- Deprivation of Legal or Constitutional Rights
- Fair Employment Practices Law
- Discrimination against Criminal Offenders in State Employment and Licensing
- Public Accommodations
- Credit Transactions
- Contract Compliance (state contractors)
- Affirmative Action Plans Required of State Agencies
- State Code of Fair Practices

The HRC processes over 2,000 complaints annually, of which a sizeable number are conciliated. Most go through a formal hearing process. There is no appreciable backlog. Most complaints relate to discrimination in employment. Housing and public accommodations are the next largest categories and the three together account for over 95 percent of all complaints. Very few complaints concern education, health or welfare. Approximately 60 percent of the complaints relate to racial discrimination. Sex discrimination complaints run a distant second. Only a small number of complaints relate to handicap discrimination, but the number is expected to increase as a result of Section 504 and PL94-142.

Complaints are handled by one of the four regional offices according to an established procedure. Some of the important features of the procedure include:

- A formal sworn affadavit which must be filed within 180 days of the act.
- Investigation of the complaint including the power to subpoena.
- A finding by the investigator of either cause or no cause with a no cause finding leading to a recommendation for dismissal of the case. A dismissal of the case can be appealed.
- Attempt at conciliation. Most cases are settled in this way.
- A public hearing if the attempt at conciliation is not successful. A hearing examiner is appointed by the chairman of the commission from one of twenty-five attorneys previously selected by the governor.
- A cease-and-desist order by the hearing examiner if the evidence supports the original complaint. If necessary for enforcement, the order may be followed by court action

The HRC is not limited to responding to individual complaints. A special projects division includes such activities as:

- Review of and comment on applications for Federally assisted programs
- Review and monitoring of equal opportunity practices of recipients of Revenue Sharing Funds
- Review, analysis, and determination of the human rights impact of land use and transportation planning.

Each of the regional offices, in addition to processing complaints, is also responsible for working with citizen groups to promote intergroup understanding and awareness of human rights and opportunities.

Overall Assessment of Capability and Commitment

Morale and commitment to civil rights is very high in the State HRC. The agency has been in existence for over thirty-five years, has a sizeable, well trained staff and an adequate budget. Since its establishment, its responsibilities and caseloads have increased greatly and it is highly regarded in the State both by the public and other State agencies. The director enjoys excellent executive and legislative support and has a national reputation for his management and civil rights activities. He also has been a strong advocate for Federal/State cooperation.

Past and Current Relationship with OCR

Although there is a good personal relationship between the HRC director and the head of the OCR regional office, no formal relationship exists. There has been little contact in the past with OCR either at the regional or national level. The most critical problem is considered to be lack of two-way communication.

Opportunities for Greater Involvement in OCR Activities

The HRC in State Four was receptive to cooperating with OCR in complaint investigation and processing. Officials have a strong preference for a referral/deferral role in which they would have the entire responsibility for investigating and resolving a complaint. A partial role such as screening or fact-finding was unacceptable since State law requires the commission to resolve every complaint received. Further, a complaint filed with OCR would also have to be filed with the HRC before it could be processed according to the State law. "Early complaint resolution" was an acceptable role, since the HRC is using this process now, but violations of State law could occur unless all such cases were pursued to a conclusion. HRC officials were willing to consider doing compliance reviews, but said they would prefer to do the entire job through correction of violations. Participating in site visits or merely providing information for OCR action was not acceptable.

The HRC was willing to consider monitoring and follow-up activities, since they have a monitoring unit and are performing this function now. Similarly, they are already performing pre-grant reviews and have information about all State grantees on file.

Prerequisites

Federal Funds would need to be provided for all activities that were outside and in excess of current workloads. However, the HRC felt it could handle cases more efficiently and at lower cost than OCR because it has closer contact with and more current information about State and local agencies.

Other prerequisites include full participation in establishing any system of cooperation; some technical assistance and training with regard to Federal requirements, philosophy and programs; clear enunciation by OCR of policies, standards and criteria regarding identification and remediation of violations; and joint agreement on standards of performance.

State Department of Education

General Description and Current Activities

Under State law each State agency is responsible for assuring civil rights compliance in all its activities and in provision of its services. In practice, violations are reported to the HRC for enforcement action, while the SEA plays an assistance and advisory role. Implementation of a recently enacted Racial Imbalance Law is the responsibility of the State Board of Education but final regulations had not yet been promulgated. The law requires the minority ratio in each school to be within 25 percentage points, plus or minus, of the minority ratio in the school district. If any schools are out of balance racially, the LEA is required to develop a plan to correct the imbalance. If the LEA will not or cannot develop a plan acceptable to the State board, the board may develop and impose its own plan. The law is silent on penalties for non-compliance but there is always recourse to court action.

The SEA staff seems committed to desegregation, but there is little evidence to indicate how aggressively they have pursued it in the past. A small Title IV unit plays primarily an advisory and technical assistance role to local school districts. Similarly, the Sex Discrimination Coordinator functions in an advisory role. The SEA efforts are not viewed as strongly successful and quite a few of the local school districts have been the subject of court actions to achieve desegregation. The SEA compiles a racial/ethnic pupil census which helps identify segregated schools, and requests a plan to correct the situation where there is an imbalance. The SEA, however, lacks enforcement authority.

Past and Current Relationships with OCR

There has been no formal relationship between OCR and the State Four SEA. The SEA does receive copies of complaints filed against local school districts from the OCR regional office, but otherwise there is little or no communication. The OCR regional office rarely shares information and seldom announces visits to State and local agencies. Nor does it share the results of the visits. The OCR attitude is viewed as hostile and punitive.

Opportunities for Greater Involvement in OCR Activities

SEA officials are skeptical about the chances of cooperation with OCR, although the staff says it is more than willing to meet OCR halfway. The SEA does not want to be viewed by the local school districts as an arm of the Federal government, and feels it has too much of that image now. They are willing to accept a participative role in enforcement of Federal laws, but do not want to be placed in the position of making unilateral determinations about civil rights violations and remedies. The SEA would be willing to consider doing screening and fact finding on complaints, but would want to be selective about the cases it handled. The SEA felt that early complaint resolution could be a useful role for them. Joint compliance reviews in which the SEA would participate as a member of a Federal/State team were considered favorably. Monitoring and follow-up were also considered useful roles which would be supportive of other SEA activities. Finally, the SEA would consider doing some pre-grant reviews provided that standards and criteria for review were established jointly in advance. Roles such as formal mediation or referral/deferral of cases were not considered acceptable, as legislative changes would be required.

Prerequisites

The SEA's first prerequisite is that it be accepted as a partner in any cooperative efforts, not as a subordinate. Officials want to participate actively in working out arrangements, in drafting policies and regulations and in establishing performance standards and criteria. Other prerequisites include the provision of resources up front for any additional workload, training and technical assistance for the SEA staff and open channels of communication.

Overall Assessment of Capability and Commitment

The SEA staff members have personal commitments to civil rights, but no desire to engage in enforcement activities as an organization. Rather, they feel their role is to advise and assist the LEAs, not to act as policemen or agents for the Federal government. Staff, funds, and capability to assist OCR in the handling of investigations or complaints are limited. They could be helpful as participants in compliance reviews, in monitoring settlements and in performing pre-grant reviews.

Department of Public Health

General Description and Current Activities

Activities related to civil rights are located under an Affirmative Action officer. Most complaints concern Title VII employment matters, very few with discrimination in services. There is strong emphasis on affirmative personnel actions. The department is small in size and manages only two State hospitals. Except for certain licensing requirements, it exercises no jurisdiction of local county or city hospitals. Hence, any discrimination complaints concerning local hospitals are handled by the Human Rights Commission.

Past and Current Relationships with OCR

The State Four Health Department has no contact with OCR.

Opportunities for Greater Involvement in OCR Activities

Health officials seemed willing to consider a variety of roles in handling complaints and conducting compliance reviews for OCR. These included screening and fact finding for complaints, early complaint resolution, referral/deferral of complaints, monitoring and follow-up, pre-grant reviews and fact finding for compliance reviews. Since only two State hospitals are involved, this would not be much of a workload. Because the department feels that it lacks jurisdiction over local hospitals, there is some question as to whether any of these roles could be effectively extended.

Prerequisites

Cooperation is dependent on the provision of resources and training and technical assistance to staff. Better communications with the OCR staff and clear understanding of policies, procedures and standards of performance are also required.

Overall Assessment of Capability and Commitment

Since the complaint workload in the health area is negligible except for employment matters, and staff and resources are small, there is little need or capability for handling discrimination complaints. The best opportunity for cooperation is participating in compliance reviews.

Department of Mental Health

General Description and Current Activities

Activities related to civil rights are located under an Affirmative Action officer. In addition there is a full time Affirmative Action/ Patient Rights officer on the staff of each mental health facility (nine in all) and most complaints are handled locally. Difficult cases are sometimes referred to the department Affirmative Action officer who also acts as the next level of appeal. The minority population in the State is small, constituting only 7 percent of the total population. The same proportion is reflected in the patient population except for Hispanics, who tend to avoid public mental health facilities and as a cultural matter try to care for mental problems within the family group. Most complaints concern employment matters, very few with discrimination in services. Most discrimination complaints concern race or national origin; very few concern sex or handicapped condition discrimination. The department maintains close contact with the State Human Rights Commission and is informed of complaints filed with them. The department has reactivated its "Methods of Administration" (MOA) originally established in 1965 but allowed to fall into disuse. The MOA sets up a procedure to inform all departmental staff; all grantees, beneficiaries, clients and vendors; the general public; and local agencies of their rights and obligations under the Civil Rights Act of 1964, as amended. The MOA also establishes procedures to assure compliance, procedures for handling complaints and procedures for periodic compliance reviews.

Past and Current Relationships with OCR

Good contacts have been had in the past with the OCR regional office with regard to monitoring of affirmative action programs. Since this is now a Labor Department responsibility these contacts have ceased. In the past the department worked closely with OCR on compliance reviews. However, OCR has not performed any reviews since 1976 and the opportunity for these contacts is now virtually nonexistent.

Opportunities for Greater Involvement in OCR Activities.

In general, there is a feeling that there are few if any serious problems of discrimination in the department or the supervised mental health hospitals. Thus, there seems little necessity to perform any of the OCR functions. However, the department is willing to handle those cases that do arise. It would prefer to do the whole job since it feels that dealing with mental patients requires a clinical background. A fact finding or screening role or any partial role would thus be unsatisfactory. Other possible roles include early complaint resolution (which is part of the current procedure), monitoring and follow-up settlements, and pre-grant reviews.

Prerequisites

Some reimbursement would be required to handle any additional workload. Technical assistance and training for the staff on Federal policies and procedures would be desirable, as well as a clear understanding of OCR policies and criteria for performance.

Overall Assessment of Capability and Commitment

Since the complaint workload is very small except for employment matters, there seems little need for handling discrimination complaints. A collaborative procedure could be established to handle the few complaints that may arise. The point about requiring a clinical background for dealing with complaints of mental patients seems well taken. If a procedure for handling such complaints were established, OCR could review the settlements to insure effectiveness. Compliance reviews also present a good opportunity for collaboration with OCR.

General Comments and Conclusions

During FY-79, OCR completed work on thirty-eight complaints in State Four and conducted one compliance review. This appears to be a fairly typical OCR annual involvement in the State, rather than the result of unusual demands there or elsewhere within the region. The efficiency and competence of the State HRC suggests that a complaint load of this size could easily be shared or expanded without creating significant stress. The generally cooperative attitudes of the Education, Health and Mental Health Departments appear to indicate that far more compliance reviews could be undertaken if specific agreements were reached with these agencies, and if OCR policies were sufficiently clear to provide a firm base of action.

STATE FIVE

State Laws and Enforcement Authority

State Five has specific authority to undertake Title VI-type enforcement activities in the areas of health, education, and welfare under a statute which prohibits discrimination by public officers and employees. The statute covers all Federally protected groups except the handicapped. A separate statute dealing with public facilities protects handicapped persons in a similar manner. The state authorizes enforcement action by local district attorneys or by political subdivisions of the State which have adopted administrative procedures to do so. There is, however, no centralized State-level enforcement program for these statutes.

Human Rights Commission

State Five has no Statewide human rights commission, although there is an advisory group attached to the governor's office. There are, however, a number of local human rights agencies responsible for the enforcement of State law. Several have received certification from EEOC to have complaints referred to them. No interview data was obtained from local human rights agencies in State Five.

State Education Agency

The SEA in State Five has been involved in handling complaints and conducting compliance reviews under the provisions of a court decree entered several years ago, even though these activities are not required by State law. These complaint and compliance functions are the task of a technical assistance office in the SEA that also receives support from CRA Title IV.

The SEA staff presently accompanies regional OCR officials on complaint investigations and compliance reviews on a regular basis. When complaints are lodged with the SEA, investigators are sent out and a notice of probable noncompliance is sent to the principal or superintendent if examiners determine a violation has occurred. This is followed by a formal letter from the SEA describing the violation and setting out a time to effect compliance. If the time frame is not met, hearings are held by regional hearing examiners whose findings are final unless appealed to the chief State school officer. In addition to regular compliance review activities, civil rights checks are included on State accreditation reviews, serving as a device for both monitoring and problem identification.

Past and Current Relationships With OCR

The consensus of State Five officials was that there is a reasonably good informal working relationship with the regional OCR. One official noted that the two agencies have been unable to achieve any kind of "useful division of labor." There was some feeling that OCR's approach to investigation was sometimes more extensive than actually necessary to remedy the problem at hand. State Five officials believed that relationships were better in areas of more experience and firmer policies (e.g., race) than in others where things were just getting started and many policy issues remain unsettled (e.g., handicapped). Relationships with the national OCR are more tenuous.

Opportunities for Greater Involvement in OCR Activities

Given the existence of both complaint and compliance review mechanisms, opportunities appear to exist for greater involvement in any complaint-related activity. There was some hesitation among SEA staff about undertaking a full referral system, however. This seemed to result from uncertainties about workload size relative to resources and about the effect of specific policy disputes and ambiguities on reaching consensus with OCR.

Since compliance reviews are presently required by court order and the SEA staff presently accompanies regional OCR staff on Federal compliance reviews, expansion of this function seems logical. One official suggested that the SEA could conduct a large number of such reviews in the State, with OCR going into greater depth in certain areas and conducting spot checks on the quality of the State reviews.

Prerequisites

SEA staff began by stating that it should be understood that the State will uphold the law and will bring its power to bear on violations. Their conflicts with OCR have involved specific policies and policy interpretations made to implement the various laws. In this respect, the SEA wants more involvement in determining specific policies--at least as they apply to State Five. The SEA also wants a greater measure of respect for the things it has done and the role it could play in securing compliance. Money was seen as the least important factor--one high official even said the SEA would prefer not to take the money because it would, in effect, create more paperwork. They felt the additional work required in an extended relationship would not require extra funding.

Department of Human Resources and Health Department

General Description and Current Activities

Two major types of activities occur under the overall authority of the Department of Human Resources (DHR). The first are those of the Civil Rights Division in DHR; the second the activities of the office that administers the Titles XIX and XX programs.

The Civil Rights Division of DHR began as an equal employment opportunity office, handling complaints of employment discrimination and other grievances within the department itself. Over time, these activities expanded to include responsibility for the enforcement of Title VI and Sec. 504, and the office has become a formal division of DHR. Although most of the Division's time is still spent on employment matters, Title VI and Sec. 504 are being given increasing attention. The division has jurisdiction over various kinds of vendors--day care homes, medical vendors, home care and nursing home facilities, family planning centers--and other assorted nonprofit organizations. The division has informal relationships with the Federal Equal Employment Opportunities Commission. Since the DHR administers the Food Stamp program, it also handles complaints under that program and has a referral/deferral arrangement with the U.S. Department of Agriculture. The agency is divided into a central staff and regional offices, the latter handling most of the on-site investigation work.

The survey office of the Department of Human Resources is responsible for conducting program compliance reviews of nursing homes funded by Title XIX. The actual surveys are conducted by the Department of Health under contract to DHR. DHR staff reviews the results and takes any necessary action. Included in these surveys are questions pertaining to admission policies and racial clustering of patients within a facility. The survey office in the Department of Health conducting these surveys performs similar functions with respect to hospitals and other providers of Medicare-assisted services.

These surveys have been conducted for many years and operate in a somewhat routine fashion. Civil rights inquiries are limited to race. Nonetheless, the mechanisms for regular visits to the vendors are in place and a staff exists that has some experience in looking for civil rights problems.

Although still in infant form, the activities of the Civil Rights Division within the DHR have included increased involvement in the field of civil rights compliance. It is the unifying force of this office that rounds out an extant civil rights compliance mechanism cutting across the departments of Human Resources and Health.

Overall Assessment of Capability and Commitment

The director of the Civil Rights Division in DHR is a highly committed and apparently effective administrator who has initiated the division's involvement in the Title VI and Sec. 504 activities. His staff's prior experience handling employment complaints provides it with basic investigative skills, although training would be needed in the substantive law and rules as applied by OCR. The director indicated that a

122

relatively modest increase in staff would be sufficient to undertake a much broader range of activities in the Title VI and Sec. 504 areas.

The survey offices presently visit a great number of vendors each year and have routinized the checks for civil rights compliance. To expand the utility of this activity, the need for staff training and upgrading sophistication of the compliance review instruments is clearly understood by the staff members we spoke with.

Past and Current Relationships with OCR

The director of the Civil Rights Division noted that his contacts with FDA officials were frequent. He felt that this had led to a level of trust and mutual respect that contributed to a good working relationship with the FDA. In contrast, he found the ROCR to be somewhat secretive about its activities and expectations. The lack of regular exchanges of information and contact had, he felt, precluded a better relationship with the ROCR staff. There were, however, informal contacts between particular ROCR and Civil Rights Division staff members.

The survey offices wanted only very rare contact with the ROCR. These offices work on nearly 100 percent Federal funds and are accustomed to constant contact with the regional program office. They are also used to receiving specific guidelines about how to go about Federally mandated work and find the lack of guidance in the civil rights area to be curious and troublesome.

Opportunities for Greater Involvement in OCR Activities

The Civil Rights Division of the I[illegible]R appears to offer the most promising opportunities. CRD is willing to undertake a full complaint referral and compliance review system and appears to be competent to do so. The CRD director felt that State agencies would be particularly well-suited to conduct compliance reviews, since there is less tension and suspicion in complaint investigations.

The State Five health agencies seemed quite comfortable entering into interagency agreements. Given this, the CRD could likely work with the Department of Health to utilize the latter's existing review mechanisms. This experience would also assist present CRD efforts to involve its own program agencies in civil rights compliance activities.

Prerequisites

Few were insisted upon. Both CRD and the survey offices felt money and training were very important. OCR would need to provide strong direction in how to accomplish compliance activities and be open about consultations and exchanges of information. Unlike the SEA, these offices seemed less wary of the spectre of increased Federal involvement (at least on an interstaff level) in State activities.

Higher Education Agency

General Description and Current Activities

The higher education agency (HEA) in State Five has responsibilities for and to a large number of local governing boards of higher education in the State. The Commissioner of the HEA has somewhat more power than in other States, but the predominant influence is still exerted by the universities and, to a lesser extent, the State and junior colleges. The HEA has no formal functions or activities in the area of civil rights, although it is presently involved in developing a desegregation plan for higher education that may be required by OCR. On other topics, the HEA acts as a mediator in various kinds of disputes between individuals, the institutions and the State agency.

Overall Assessment of Capability and Commitment

Many potential roles are precluded for the State Five HEA because of its power and relationship to the institutions. However, it does have experience in facilitation and mediation and such roles would seem to be the best possibilities for expanded relationships with OCR. The HEA staff for all functions is currently very small, and any role requiring substantial staffing would have to be ruled out. The head of the HEA felt, however, that having a designated staffer who would have constant interaction with the institutions and be available for technical assistance and mediation functions would be a useful and appropriate role for the HEA.

Past and Current Relationships with OCR

The HEA has had a continuing relationship with the ROCR staff stemming from preparations for a possible Statewide desegregation plan in higher education. The staff reported a relationship of respect, but said that they would stand their ground if they felt an OCR position was inappropriate. Some friction has occurred over the need for national OCR approval of local settlements. It was felt that if both the complainant and the institution were satisfied, the settlement should not require OCR sign-off. Because of the present situation, it is difficult to assess the "normal" relationship between HEA and OCR.

Opportunities for Greater Involvement in OCR Activities

The agency sees itself primarily as a facilitator and "spot-checker." Therefore there was interest in corresponding OCR roles, e.g., screening and fact-finding, early complaint resolution and mediation. The size of the HEA and its authority and power relative to that of the institutions made a full referral/deferral role less likely.

Compliance review activities would have to be confined to HEA staff participation on OCR review teams. Again the time and staff required would be prohibitive, and the nature of the HEA would preclude significant staffing increases, even if the money were available to do this.

Prerequisites

The head of the HEA said that he recognized the need for continued pressure from the Federal level in the area of civil rights. Relinquishing this posture would, he felt, be a bad thing. Nonetheless, the HEA feels there is a need for some kind of formal mechanism or voice to represent the State agency and State interests and to create a balanced development of civil rights policy. There was a feeling, for example, that some provisions of the Adams higher education guidelines were contradictory and thus impossible to fully implement. The HEA would also like to see some way to give credit to agencies for good things that are happening. This would create more of an incentive and help the State agency in securing State-level financial assistance, since it would be able to show progress and Federal approval for at least some of its activities. Finally, the HEA felt there should be more authority for the parties to a dispute to settle it themselves--with OCR acceeding to a mutually agreeable solution.

General Comments and Conclusions

During FY-79, OCR completed 243 complaint cases in State Five and conducted fifty-two compliance reviews. This extremely high level of activity reflects an OCR management decision to deal systematically with a large group of similar complaints heretofore untreated in that State. However, the size of the State and its extremely rapid expansion of minority populations suggest that annual workloads in civil rights will continue to be high for several years. Under such circumstances, the utility of productive agreements with State agencies is obvious. Our review of State agencies suggests that several possibilities do exist for greater State involvement in Federal civil rights concerns, but that the specific roles to which they are best suited vary greatly among the agencies.

The most promising and interesting possibilities seem to lie with the Department of Human Resources. Its Civil Rights Division appears to have the general training and commitment needed to establish far more active roles in both complaint handling and compliance review. Although of the current OCR caseload in State Five only about 10 percent of the complaints arise in health and human development areas, there is widespread agreement that increasing concern over Section 504 will soon greatly increase this proportion. If so, an active, well trained State agency staff could prove extremely valuable to OCR.

The SEA offers similar opportunities and already has more experience with OCR and its procedures than most other agencies in the country. If existing policy disagreements between the SEA and the national OCR office can be resolved, much could be accomplished through an expansion of current State compliance review activities.

STATE SIX

State Laws and Enforcement Authority

State Six has specific statutory authority to undertake Title VI-type enforcement activities in the areas of health, education, and welfare. The statute covers all Federally protected groups presently within OCR's scope of authority: race, national origin, color, religion, handicap and sex. The Title VI-type statute grants enforcement authority to specific regulatory and program agencies. These agencies have the authority to withhold funds and the State attorney general is authorized to bring action against public or private grantees for prohibitory or mandatory injunctions against discriminatory activity. The State Human Rights Commission is responsible for enforcement of nondiscrimination laws in employment and housing and other areas, some of which overlap with the responsibilities of other State agencies such as the State Education Agency, the Department of Health, and so on.

Human Rights Commission

General Description and Current Activities

The HRC in State Six has a staff of approximately fifty people, of whom about two-thirds are lawyers or trained field investigators. The agency budget of about $1.25 million annually includes about $300,000 of funds from Federal Agencies other than HEW. Caseloads average about 1,200 to 1,500 new cases per year, plus 300 to 500 cases from a backlog. Cases in the current backlog are less than one and one half years old, and the agency expects to have the backlog completely cleared within the next two years.

The predominant agency activity is the investigation of complaints in employment, public housing, and public accommodations. Within the employment area (which is the largest part of the agency caseload), complaints related to racial discrimination are most frequent, followed by those related to sex, national origin and handicapping condition, in that order. Complaints are taken based on either State law or Federal law (in the latter case through EEOC referrals to the agency). The procedures for handling all complaints includes a mandatory "predetermination" phase, intended to provide early clarification, settlement, or withdrawal of cases as frequently as possible.

Between 5 and 10 percent of all cases involve complaints against a State agency (or its contractors, vendors or grantees) for alleged discrimination in access to or distribution of services.

The HRC is not limited to responding to individual complaints, but may also undertake independent action on the basis of its own investigations. This authority, which is used regularly, is similar in some ways to OCR compliance review activities, though on a less systematic basis.

The State Six HRC also does pre-grant review of Federal agencies other than HEW.

Overall Assessment of Capability and Commitment

Morale and commitment to civil rights appear to be extremely high in the State Six HRC. The agency has existed for over thirty years and seems to have greatly increased its caseloads, management efficiency and public reputation during the last five years. Agency leadership, staffing, and budget appear to be quite stable, despite the recent election of a more conservative governor.

Past and Current Relationship with OCR

No formal relationship has existed between the State Six HRC and either the national or regional OCR office. Informally, there seems to be some tension between the HRC and the regional OCR office, which was expressed as uneasiness over what the HRC perceived as vague standards and long delays. However, tensions were certainly not so great as to constitute any significant barrier to future work, subject to some conditions discussed below.

Opportunities for Greater Involvement in OCR Activities

The HRC in State Six was most willing to discuss taking a greater role in complaint investigation and processing. The role we had labeled as "early complaint resolution" seemed very similar to the existing HRC "predetermination" procedures, and thus appeared to fit well. The HRC was also open to discussions of "screening and fact finding" or "initial investigation" roles. However, all three of the preceding roles were seen by the HRC as being only partial resolutions to a pending complaint, and were therefore considered a "second best" solution. The HRC much preferred a referral/deferral role, in which it would have the entire responsibility for handling a specific complaint.

The HRC was not eager to engage in compliance reviews related to OCR, feeling these activities would be more suitably done by State program agencies.

The HRC was willing to discuss further an expansion of pre-grant review and/or settlement follow-up activities. Agency representatives felt that either activity would require the development of new procedures and greater agreement on policy than currently exists.

Prerequisites

Federal funds must be available to underwrite HRC activities undertaken for OCR. The HRC expressed an opinion, however, that the cost would be no greater, and might be somewhat less, than current OCR processing costs. Either an annual lump sum, or case-by-case contract was acceptable. One agency representative commented that the HRC might welcome a contract specifying that the State agency would have to maintain its own fiscal effort during the period of the Federal contract.

Agency officials felt that minimum special training would be required, but mentioned that the training of new employees to carry out these activities could or should be borne by the Federal agency.

Two nonfinancial prerequisites stressed by HRC officials were (1) clear understandings about the criteria for identifying and remedying violations, and (2) firm agreements about the processing schedules for both State HRC and regional or national OCR offices.

State Educational Agency

General Description and Current Activities

State law vests program agencies in State Six with enforcement responsibilities, and these have been developed more aggressively in the SEA than elsewhere in the State. An equal educational opportunity office handles both civil rights compliance activities and technical assistance activities sponsored by Title IV. However, a concern for civil rights issues was not confined to that office, but was apparent throughout the department.

The SEA has established procedures for promptly handling any complaint (formal or informal) made to the department. We were told that about one hundred complaints a year related to civil rights. Although some complaints are transferred to the HRC for action, most are investigated and settled by the SEA directly, with reliance on court action when necessary. Among the SEAs we visited, the State Six department was clearly the most aggressive in this respect.

Equally impressive, however, were the SEA compliance review activities. An annual schedule of reviews on a particular topic (such as race, sex, or special education) usually amounts to about a dozen such reviews. In addition, a staff member from the equal education opportunity office accompanies every SEA team engaged in a categorical program review to provide oversight of civil rights areas. Approximately seventy to eighty such reviews are done each year.

Past and Current Relationship with OCR

There has been, and is now, no formal relationship between OCR and the State Six SEA. However, there are serious tensions between the two agencies. Much of the difficulty stems from instances in which the SEA and OCR are simultaneously investigating the same or similar complaints. In such cases, we were told, the OCR regional office is likely to truncate a detailed SEA investigation by reaching a hasty settlement that is substantially below that which the SEA would have demanded. Thus, the lack of communication and confusion over criteria that are evident in all the States we visited seemed to create special problems in States such as Six, where program agencies take an aggressive enforcement role. In addition, State Six officials feel that these familiar problems are exacerbated by a condescending and almost hostile attitude of some regional OCR personnel toward the SEA staff.

Opportunities for Greater Involvement in OCR Activities

Despite the problems mentioned above (and in part because of them), the State Six SEA is willing to undertake a broad range of expanded activities for OCR. Several roles related to complaints met with approval. For example, preliminary investigations and early complaint resolution were viewed as possibilities, to be done either by the SEA alone, or as part of an SEA/OCR team. SEA officials expressed the greatest enthusiasm for a contractual referral/deferral arrangement for complaints.

As the current SEA activities in compliance review suggest, SEA officials were also open to discussing a greater role in similar OCR activities. At minimum, they would like to be included in a Federal/State review team. They would also be willing to expand their schedule of independent compliance reviews (providing certain conditions were met for funding and for agreement on standards). Moreover, the SEA was willing to discuss a systematic monitoring of settlements, using either data checks or on-site reviews (depending on funding). Finally, the SEA was willing to do more extensive pre-grant review, under certain conditions discussed below.

Prerequisites

According to the chief State school officer, when the SEA and OCR both have an interest in a particular issue, complaint or district, it is essential that there be coordination regarding the depth of investigations and the terms of settlement.

Related to this, the SEA wanted to be assured that settlements reached would have precedential effect. State Six officials did not suggest, and do not want, veto authority over OCR actions. However, they were firm in stating that they wanted the opportunity to achieve extensive settlements of cases, consistent with both Federal law and State policies, without fear that precipitous OCR actions will occur. Beyond this pervasive concern for better communications, other conditions applied to particular roles. For example, SEA officials were reluctant to do extensive pre-grant reviews unless the approval standards are known in sufficient time to bring LEAs into compliance before applications are submitted and reviewed. Similarly, the department's willingness to monitor settlements carried a prerequisite that violations thus discovered are acted upon promptly. Appropriate funding for expanded activities was also required, though a variety of means for providing funds were acceptable.

Overall Assessment of Capability and Commitment

The State Six SEA has a national reputation for its commitment to civil rights, and this was borne out by our interviews. Civil rights activities are well staffed and are a special concern of the chief State school officer. The department exhibits a willingness and ability to integrate civil rights concerns with program activities that appears, in some ways, to exceed that of HEW.

The specificity of this SEA's prerequisites is unusual and undoubtedly reflects its own field experience and the existing tensions with the regional OCR office.

Health Department

General Description and Current Activities

Activities related to civil rights are located under a Deputy Commissioner for Management. Specific complaints dealing with civil rights may be entered with that office, or with the Health Commissioner's office. Complaints related to employment are usually transferred to the HRC. Those dealing with access or delivery of services are dealt with by the Health Department, but we were told that such complaints were very rare.

The department carries on a variety of activities related to general compliance and enforcement, though they do not correspond precisely to OCR procedures. For example, all pre-grant reviews emphasize civil rights assurances, and include a needs assessment of civil rights problems. An annual review is done on every contract. This review may, but does not always, include a civil rights review (depending in part on past experience with that contractor and on any formal or informal complaints). Violations may also be uncovered during interim field inspections. All contracts contain a thirty-day revocation clause which may be invoked to deal with violations by either contractors or grant recipients, if and when negotiated remedies fail.

Past and Current Relationship with OCR

Health Department officials with whom we spoke reported that they had had no contact with OCR.

Opportunities for Greater Involvement in OCR Activities

Officials seemed willing to consider a broad range of tasks and relationships with OCR. Considering the relatively low level of complaints in this area, efforts would appear to be best invested in extending compliance reviews.

Prerequisites

The Health Department is willing to cooperate as a partner in civil rights activities, but only if policies and criteria are clear. Funding would be required if agreements resulted in any extension of current activities based on OCR's needs.

Overall Assessment of Capability and Commitment

The civil rights activities in the Health Department have only been in operation for less than two years. Since the annual case load is extremely low in all State health departments, there is little basis for judging the department's performance. However, there appears to be a strong base for compliance activities and systematic procedures. The staff with whom we spoke appeared to value civil rights as an important focus of their work, rather than as a tedious low-priority requirement.

Department of Mental Health

General Description

Our contacts with this State Six Department were not very profitable. We were referred to the Affirmative Action Office, which handles only internal employment issues. When issues dealing with areas other than employment come to the attention of this official, they are directed to the HRC. It is possible that civil rights related activities are carried out by some other office within the department, but we were unable to locate any such office. The Affirmative Action officer had never heard of OCR.

General Comments and Conclusions

During FY-79, OCR completed a total of 113 complaint cases in State Six and conducted three compliance reviews. The apparently high number of complaint cases appears related to the fact that the regional OCR is located in State Six, and that State Six has a highly activist political culture resulting in extremely high instances of complaints. The latter supposition is supported to some extent by considering the extremely high case load of the HRC and the report of SEA officials that several hundred complaints are entered with that agency each year (of which about one hundred deal with civil rights).

The willingness of several State Six agencies to undertake some complaint handling in cooperation with OCR suggests several potential means for OCR to speed up handling of the unusually high case load. Equally strong and perhaps more attractive opportunities to improve the coverage of compliance reviews exist through agreements with the SEA and the Health Department.

Funding would be needed if any of these agencies were to expand their OCR related activities, along with firm agreements about procedures, criteria and schedules. Given the multiple strengths of the State Six agencies, OCR negotiations might proceed broadly across several simultaneously. Alternatively, a Statewide application process could allow agencies to reach agreements among themselves.

STATE SEVEN

State Laws and Enforcement Authority

State Seven has a statute modelled after Title VI which prohibits discrimination in or denial of access to or benefits from any program of assistance receiving State funds. Coverage of the statute is generally broad, but agencies are required to implement rules only if they let contracts in excess of $100,000 per year. All Federally protected groups are covered by the statute. Interpretive regulations are now being developed for this recently passed statute.

Human Rights Commission

There is no separately established Human Rights Commission in State Seven with functions comparable to those described for other States in this study.

State Department of Education

General Description and Current Activities

State law vests program agencies in the State with responsibility for enforcement of civil rights. The SEA, however, does not have a record of aggressively pursuing these functions. With several large minority populations in the State, desegregation is a sensitive political issue and most action is left to the courts. A central office within the SEA handles both civil rights compliance activities and technical assistance activities under CRA, Title IV. However, SEA officials reported that they viewed aggressive civil rights enforcement activities with misgivings. Most of the staff feel they are educators, program managers and providers of assistance, not enforcers. Thus the department does not take an active role in searching for discrimination.

The SEA does respond to specific complaints of discrimination covering ethnic group, religion, age, sex, color, or physical or mental disability in the provision of both services and employment. The complaint procedure requires the aggrieved party to first seek redress through the local school district and then appeal to the SEA if satisfaction is not received. The SEA investigates and holds formal hearings if the complaint cannot first be resolved through informal means. Enforcement can be through court action or the withholding of State funds. Decisions of the SEA may be appealed to the State courts. Court actions regarding discrimination have been numerous.

Past and Current Relationship with OCR

The general impression of the SEA staff was that there was little or no formal contact with OCR except when the State sought clarification and interpretations of Federal laws and regulations. The staff stated that the SEA was generally bypassed on desegregation cases as OCR dealt directly with the LEA. On the other hand, the head of the office charged with civil rights responsibilities reported frequent formal and informal contacts with regional OCR staff as well as good personal relationships. He received copies of findings when complaints were resolved, and sometimes was asked to help with cases that seemed susceptible to early complaint resolution. He felt there were still some problems of formal communication; for example, he did not receive advance notice of compliance reviews, complaints filed with OCR, or investigations started.

Opportunities for Greater Involvement in OCR Activities

The SEA staff indicated only limited opportunities for working with OCR. They felt there were too many differences between Federal and State laws and regulations to accept referral/deferral of complaints or to perform only screening and fact finding. They were interested in helping with early complaint resolution since this is part of their current procedure. They also showed some interest in monitoring and follow-up of settlements as part of their normal program review schedule. Although SEA officials said it would be desirable to establish a cooperative relationship with OCR, they could indicate only limited specific opportunities for such cooperation.

Prerequisites

The preconditions for developing a cooperative relationship included the provision of resources, participation in any development of a system for cooperation, technical assistance and training, and firm statements of OCR policies, procedures, and standards for enforcement.

Overall Assessment of Capability and Commitment

The SEA in State Seven does not seem a strong candidate for expanded activities related to OCR. There are possibilities for a role in early complaint resolution. SEA resources could also be used to resolve complaints informally, but little lies beyond these areas. The SEA feels bound by State law and believes that there are too many differences between the State and Federal law to be able to work on Federal cases. Whether or not this is actually so, there is no great willingness to assist OCR, although there is a strong desire to expand the already fairly good lines of communication.

Health Department

General Description and Current Activities

Two separate groups in the Health Department in State Seven were interviewed. One, a health services group, exercised general supervision over all county and local health institutions, including hospitals, clinics, health centers, nursing facilities, rural centers, and Indian health centers. There are over 1,000 such institutions throughout the State. The other group was concerned with health planning and development in the State and interacted with the fourteen local and regional health systems agencies.

Both groups have civil rights offices with similar responsibilities: to insure compliance with civil rights in staffing and services with regard to race, national origin, religion, sex, or handicap. Responsibilities cover both Federal law (Titles VI, VII, IX and Section 504) and State law.

Most complaints in the health services group concerned Medicare. Providers of services complain about slow reimbursement or lack of business on account of color or race and favoritism towards white competitors. Patients complain about inability to obtain service or being shuffled from one office to another on account of color, race or handicap. Most complaints are resolved in an informal manner at the local level.

The health planning group reported that they received very few complaints, although they believed that some providers did practice subtle discrimination against the poor and minorities.

Both groups emphasized a low-key approach to handling complaints and felt that such negotiations were successful in the majority of cases.

Past and Current Relationship with OCR

Both groups reported that their infrequent contacts with OCR were usually concerned with the interpretation of regulations. The health services group also reported seeking guidance in developing a particular form for obtaining assurance of compliance in certain health facilities. There was no contact with OCR on specific complaint cases.

Opportunities for Greater Involvement in OCR Activities

Both groups feel it would be desirable to have more contact with OCR and that better communication and exchange of information would be very beneficial to both Federal and State officials. The health services group members were willing to consider a wide range of cooperative arrangements with OCR, from screening and fact finding to early complaint resolution to complete referral/deferral. They felt that monitoring

140

and follow-up of settlements was important and were willing to take on this role. With regard to compliance reviews, they would prefer to be part of a Federal/State team rather than have the full responsibility. They did not feel that they could perform pre-grant reviews because the time pressures and the workload would be too heavy.

Members of the health planning group saw themselves as assisters, not enforcers, and were concerned about maintaining this image. Therefore they felt that screening and fact finding, referral/deferral, compliance reviews and monitoring of settlements would damage their relationships with regional and local agencies. They would be willing to consider doing early complaint resolution, participating in compliance reviews as a member of a Federal/State team, and conducting pre-grant reviews if the workload were manageable.

Prerequisites

Both groups had similar prerequisites for cooperation with OCR. Improved communications between OCR and State agencies with regard to complaints filed, investigations started, results of findings, and settlements reached were essential. Health officials also desired full participation in development of any system of cooperation including procedures, standards, criteria for enforcement, and evaluation. To the extent that increased workloads resulted, OCR funding would be required. Support for training and technical assistance on Federal laws, regulations, and techniques was also cited. Finally, clearer OCR policies, interpretations, and criteria for enforcement were a clear concern.

Overall Assessment of Capability and Commitment

Both the health services and health planning groups have a high commitment to civil rights enforcement. However, only the health services group seemed to have the willingness and the capability to cooperate with OCR. It would be desirable to consider a role for them short of full referral/deferral. This role could include screening and fact finding, early complaint resolution, monitoring and follow-up of settlements, and as a team member in compliance reviews.

General Comments and Conclusions

During FY-79, OCR completed some 212 complaint cases in State Seven, and conducted five compliance reviews. The high complaint figure undoubtedly reflects three situations: the size of the State, the particularly activist nature of the citizenry in civil rights matters, and the relative inactivity of State agencies. Our review of the State suggests that, in the absence of a State HRC and the presence of great hesitancy within the major agencies, the complaint load will have to continue to be handled by regional OCR officials. Limited opportunities may exist for using State agencies in mediation or monitoring roles or for beginning to develop competence in compliance reviews through the use of joint State/OCR teams. The most pertinent lesson to be learned from State Seven, however, is that reputation and State laws alone are insufficient knowledge upon which to base estimates of the productivity of expanded Federal/State agency relationships.

STATE EIGHT

State Laws and Enforcement Authority

State Eight has had specific statutory authority to enforce civil rights for over twenty-five years. Its original statute was strengthened and updated in 1977 and is in some ways more comprehensive than Title VI. The statute covers religion, race, color, national origin, sex, height, weight, and marital status and applies to employment, housing, utilization of public accommodations, public service, and educational facilities. "Public Accommodation" is an inclusive term meaning any business, facility, or institution providing goods or services to the public and includes education, health, and welfare activities. Enforcement authority is solely the responsibility of the Department of Civil Rights, which can "receive, initiate, investigate, conciliate, adjust, dispose of, issue charges and hold hearings on complaints," and can order cease-and-desist actions which may be appealed only to the State courts. Under a 1975 Executive Order, all State agencies are charged with responsibility for civil rights compliance in their activities, but any enforcement action is referred to the Department of Civil Rights. When complaints to a state agency cannot be resolved informally, the complainant is generally advised to file with the Department of Civil Rights.

Human Rights Commission

General Description and Current Activities

The HRC in State Eight was established by the State constitution in 1963. It consists of eight members, no more than four of whom may be from the same political party. They are appointed by the governor with the consent of the State Senate. The Department of Civil Rights is the executive arm of the HRC. It has a staff of over 300 employees in its headquarters and eleven district offices, and its FY 77-78 budget totalled approximately $8.5 million. It received less than $500,000 in reimbursement from EEOC. In FY 1975 the department received 5,543 complaints, a 10 percent increase over the previous year. At the end of the year, 5,237 cases were closed and the rest were in process. There is no appreciable backlog.

Discrimination in employment accounted for 90.5 percent of all complaints. Education accounted for 1.1 percent and public accommodation (which includes health and welfare activities) 2.4 percent. Complaints are received based on State law; if Federal cases referred from the EEOC do not meet the requirements of the State law, they are returned to the EEOC. However, this rarely happens.

Formal complaints are investigated by the division's Complaint Investigations Section. This office is responsible for investigating all complaints filed in the State's largest metropolitan area (approximately 60 percent of all complaints filed with the department). The Outstate Complaint Investigation Section, which has six investigative units, handles all complaints outside of the metropolitan area. The typical investigative unit is composed of five field representatives, one unit secretary and a case supervisor.

If the department determines that there are insufficient grounds on which to base a charge, it notifies both parties of the determination and reasons for refusal to issue a charge. At this time, the claimant may ask for reconsideration within thirty days of the mailing of the notice. If the decision is for reconsideration, a hearing is scheduled. The hearing referee makes his recommendations to the commission. The Civil Rights Commission may uphold or reverse the opinion of the referee.

If the field investigation determines that probable cause for a complaint of unlawful discrimination exists, an effort is made to resolve the problem through conciliation. Failing this, the complaint is moved to the Hearing Section for legal review, and subsequently to the attorney general's office. Assistant attorneys general examine the elements of the investigation and/or evidence to determine whether they are sufficient to proceed to public hearing or a trial. If found sufficient, a charge is issued by the Enforcement Division.

The department is not limited to responding to individual complaints, but may initiate action on the basis of its own investigations. It also has a Contract Compliance Section which conducts reviews of bidders for State contracts to determine whether the workforce of the bidders have a reasonable representation of minorities and women.

Overall Assessment of Capability and Commitment

Morale and commitment to civil rights is very high in this State Eight agency. It has a large, well-trained staff and an unusually large budget. The department has a reputation as a leader among State civil rights agencies and has developed a number of innovative management procedures, including a computerized case information system. Despite a constantly increasing case load, it has reduced the time necessary to investigate and process complaints by half in the last three years. The agency has a good public reputation and enjoys strong executive and legislative support.

Past and Current Relationship with OCR

The department has had very little contact with OCR either at the regional or national level. It has had more contact with other Federal agencies including EEOC, HUD, LEAA and ORS.

Opportunities for Greater Involvement in OCR Activities

The HRC in State Eight was quite willing to cooperate with OCR in complaint investigation and processing. Their preference was for a referral/deferral role, in which they would have the entire responsibility for investigating and resolving a complaint. A partial role, such as screening or fact-finding alone, was considered undesirable. They were willing to consider early complaint resolution on a selective basis.

HRC officials were reluctant to engage in compliance reviews for OCR unless they could also take action against discriminatory practices where found. Although the agency conducts contract compliance reviews of bidders for State contracts, it did not feel able to take on a pre-grant review function for OCR, as the workload would be too great. However, the HRC was willing to consider monitoring and follow-up of settlements.

Prerequisites

Federal funds should be available for activities that were outside and in excess of current workloads. Additional resources were not considered critical for referral/deferral of complaints since most of these would probably fall under the provision of the State law.

HRC officials did feel that technical assistance would be required with regard to Federal requirements, standards, criteria for performance and interpretations of Federal laws and regulations. In addition, they wanted to participate in the development of any cooperative procedures and criteria for evaluating performance. They wanted to be treated as partners, not subordinates.

State Education Agency

General Description and Current Activities

Under State law, enforcement responsibility for civil rights rests with the Department of Civil Rights, not the program agencies. However, an Executive Order in 1975 requires State agencies to assure that recipients of State funds or services do not have any discriminatory practices. Under these conditions, the SEA plays an advisory and assistance role to LEAs on civil rights matters.

The SEA has issued a strong policy statement supporting integrated education and has developed various guidelines for integrated education, for voluntary interdistrict exchange of students, for multi-cultural education and for eliminating sex discrimination. However, the civil rights staff is small and supported mostly by CRA Title IV funds. Their efforts are not viewed as highly successful and numerous school districts in State Eight have been the subject of court actions to achieve desegregation. The SEA compiles a school racial/ethnic census which is one mechanism to identify segregated schools, but has no power to compel compliance with either Federal or State antidiscrimination laws. The department provides guidance and technical assistance to school districts in the development and implementation of desegregation plans, and in eliminating handicapped and sex discrimination practices.

Past and Current Relationships with OCR

There has been no formal relationship between OCR and the State SEA. The SEA is critical of OCR for its failure to notify the SEA of visits, inspections, or investigations of local schools.

Opportunities for Greater Involvement in OCR Activities

Officials in the State Eight SEA are skeptical about pursuing cooperation with OCR. There is a feeling that the State is ahead of the Federal government in promoting and enforcing civil rights and that the SEA has little to gain. Some of this skepticism could be overcome by sharing information about complaints and the results of cases and by opening up the lines of communication.

Nevertheless, there are some possible roles the SEA would consider. The SEA officials feel they could provide some services similar to early complaint resolution by reviewing the complaint in advance and trying to make formal OCR or court action unnecessary by improving local compliance. Monitoring of settlements could be done as part of the normal SEA program review activity. The SEA would also participate in compliance reviews as a member of a Federal/State team. The SEA would not take on this activity on its own responsibility, however.

Prerequisites

According to SEA officials, the first prerequisite is the establishment of channels of communication between OCR and the SEA. They feel that OCR must share information about complaints, visits, investigations, and cases. Without this the SEA feels there can be no basis for cooperation. A second prerequisite is funding for activities that would create an additional workload.

Overall Assessment of Capability and Commitment

The State Eight SEA has a strong commitment to civil rights enforcement, but staff and funds to assist OCR are limited, particularly with respect to complaint investigations. The SEA could be helpful as a participant in compliance reviews and in monitoring settlements if OCR showed good faith in sharing information.

Department of Public Health

Activities related to civil rights are located under a Special Assistant to the Deputy Director and also under the Deputy Director of Local Health Services. Most complaints deal with employment matters, very few with discrimination in services. There is strong emphasis on affirmative personnel actions at both the State department level and at local health department levels. Attention is also given to civil rights contracts compliance with regard to laboratory contracts and university research contracts with local health departments. Problems regarding enforcement are referred to the Department of Civil Rights.

Past and Current Relationship with OCR

Health Department officials with whom we spoke reported little or no contact with OCR. Their contacts were principally with the State Department of Civil Rights.

Opportunities for Greater Involvement in OCR Activities

Officials seemed willing to consider handling complaints and compliance reviews for OCR, feeling that they could do the job faster and cheaper than a Federal agency. They would welcome the opportunity to develop a pro-active program. Considering the low level of complaints, however, it seems that any efforts would be best invested in compliance reviews.

Prerequisites

Cooperation is mainly dependent on the provision of resources. Some training of staff and technical assistance would also be required if the present scope of activities were expanded.

Overall Assessment of Capability and Commitment

Since the complaint workload is negligible except for employment matters and staff resources are small, there is little need or capability for handling complaints. However, there is a strong commitment to civil rights and a desire to develop a pro-active program, forming a good basis for compliance review activities.

Office of Vocational Rehabilitation

General Description and Current Activities

The office is involved with the job placement of the handicapped. It deals mostly with State agencies and with grantees and contractors receiving State funds. It has no staff to conduct investigations and depends on signed assurances and certifications. The office reviews all grant applications for vocational rehabilitation funds requested for modification of facilities to serve the handicapped. This review involves both physical inspections and data review. The office conducts about forty-five such reviews a year.

Past and Current Relationship with OCR

The office has had no contact with OCR, although it is interested in obtaining guidance on Section 504 compliance.

Opportunities for Greater Involvement in OCR Activities

The Vocational Rehabilitation staff is willing to consider several activities with regard to Section 504. They are willing to work with OCR in investigating complaints and in providing expert testimony in hearings. They would also consider performing pre-grant reviews. They have no interest in performing compliance reviews nor do they desire any enforcement role. They feel this would conflict with their role as helpers and providers of assistance.

Prerequisites

With regard to Section 504, the office would like clear policy statements, interpretations of regulations, technical assistance, orientation and training and resources to carry out any assigned responsibilities. Above all, they would like to establish a continuous dialog with OCR and a means to exchange information.

Overall Assessment of Capability and Commitment

The staff has a strong commitment to protect the rights of the handicapped. Their expertise, however, is in the area of employment and physical facilities. As experts in these areas they could provide OCR with technical assistance in investigating complaints. Enforcement roles are greatly limited by institutional factors.

General Comments and Conclusions

During FY-79, OCR completed thirty-three complaint cases and conducted one compliance review in State Eight. Considering the size of the State, its high civil rights conciousness, and the high proportion of various minority populations, this load seems unusually light. It may reflect a high degree of public confidence in the State HRC and therefore a tendency to enter complaints at the State level rather than with OCR. Our review of the HRC suggests that it would be a strong candidate for expanded relationships with OCR, based on the size and training of its staff and the strength of the State law. The HRC appears willing to undertake complaint investigations and referrals, as well as to explore various monitoring agreements.

Some possibilities exist for expanding compliance review activities within the State by working with program agencies. The first step would logically be a team approach in which State staff accompanied OCR staff on field reviews.

Appendix

SUMMARY OF SURVEY OF STATE CIVIL RIGHTS LAWS AND ENFORCEMENT MECHANISMS GOVERNING STATE FUNDED SERVICES AND FACILITIES

Section V of Part One provides an analysis of the information obtained in our survey of State civil rights laws and enforcement mechanisms among the fifty States. This appendix presents that information in considerably greater detail. The information is contained in Table A-1. To assist the reader in using this table, this appendix describes the table items and defines terms used.

Description of Table Items

The descriptions used in the summary table were developed for the purposes of this project and thus may not conform to terminology in use by the States with laws described.

State Law Authority

"Specific Title VI-type statute" refers to a law, executive order, regulation or official policy which deals with discriminations in the access to, and provision of, services to ultimate beneficiaries in the health, education, and welfare areas. We were particularly interested in identifying laws tied to State grants or other receipt of funds since these would be most comparable to Title VI and related laws. The convention includes sex and handicapped discrimination.

"Probable authority" means a statute, etc., which we determined or were told could apply to health, education, or welfare facilities and services, although not specifically modeled after the Title VI-type statutes. The normal example is a State's public accommodations statute, as indicated on the table.

"Enforcement program" refers to an existing State mechanism and policy designed to ascertain and enforce against Title VI-related violations. For Title VI-type statutes, this would be some enforcement program created to effect compliance with that statute. For the others, particularly public accommodations laws, enforcement programs generally deal with housing and employment discrimination. An enforcement program for Title VI-related violations is said to exist only if the interview respondent so indicated. This information must be considered somewhat speculative, since many respondents were unfamiliar with the incidence of Title VI-related discrimination, and since the enforcement policy of many States is simply to respond to any complaint when filed. In general, however, we were able to identify and separate the latter kind of enforcement program from those clearly directed toward services discrimination; in such a case the table reflects that no enforcement program exists for Title VI-related violations.

Classifications Covered

These items indicate whether the six major Federally protected classes are also protected under State laws. Where relevant, we have indicated in footnotes any limitations within a protected class, e.g., only certain handicaps are covered in some State laws.*

State Program Inclusions or Applications

These items pertain to the extent and scope of the particular State law authority involved. Because of the diversity of State laws encountered, a reference to the study's methodology is useful to explain the table items in this grouping.

First, since the study was limited to inquiring about State laws, these items do not reflect anything State agencies may be doing to enforce the Federal statutes. If no specific State statutory authority was involved (or if our respondent indicated that there was no specific State-authorized enforcement program), we considered further research to be beyond the scope of this study. In fact, however, we have reason to believe that in a number of States individual agencies conduct active Federal assistance enforcement programs: some may even hold hearings and issue orders, observing State administrative procedure requirements. To have identified these circumstances would have expanded our project substantially beyond budget limits. As it was, we contacted individual agencies only when our respondent at the Human Rights Commission (attorney general's office, etc.) indicated that those agencies conducted separate, State-authorized enforcement programs for Title VI-related violations.

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*OCR jurisdiction is limited to five of these classes: race, color, national origin, sex and handicap. Religion-based discriminations are not within OCR's purview.

Second, the information relating to the scope of civil rights authority and enforcement procedures (under State law) is of only indirect relevance for a significant number of States. If the State had no specific Title VI-related statutory authority and no Title VI-related violations, the respondent generally resorted by analogy to the scope of authority and procedures utilized in housing and employment discrimination cases. These responses were encouraged since they offered at least some basis for evaluating State experience and policy on analogous issues or points of concern.

Scope of Title VI-type Authority

These items pertain directly to instances where Title VI-type authority (or probable authority and an enforcement program) existed. They were intended to gauge the scope of the law by asking about items likely to be omitted in a less comprehensive scheme. Questions were asked about whether the nondiscrimination rules would apply to subgrantees as well as grantees; facility siting decisions; private uses that might be made of a public facility; and the ordering of affirmative remedial action reaching beyond the injury done to an individual complainant.

Limitation on State Law Authority

Beyond the question of the scope of Title VI-type authority, there is the issue of whether some general law prohibits taking action against particular types of entities likely to be regulated under Federal law as the recipients of Federal assistance. Thus a "no" under one of these items would mean, for example, that the relevant State agency could not proceed against another State agency ("State agency grantees"), or a local governmental unit ("local government grantees"), or some entity that received Federal assistance to the activities in question (e.g., "Federal grant to local government").

In several cases, besides not precluding jurisdiction against a particular entity, we were told that not even a funding link was necessary to assert jurisdiction since the relevant statute provided a jurisdictional basis for enforcement generally.

Enforcement Agency

These items are fairly self-explanatory. Instances of dual authority were not uncommon; when they occurred, they generally involved the human rights agency and the program agency. As noted above, program agencies were contacted only if the Human Rights Commission or attorney general's office indicated that the agencies had some enforcement role. Thus it is again possible that some program agency enforcement efforts went unidentified.

Enforcement Mechanisms and Procedures

These items reveal the tools available to the enforcement agencies to effect compliance with the laws and to resolve complaints. In general they present mechanisms or procedures applicable to the enforcement proceedings, and sanctions and remedies. The survey used these terms in the following manner:

- Record-keeping: Whether records suitable for use in determining the compliance posture of subject agencies and entities are required outside of the enforcement context.
- Self-Monitoring: Whether some kind of compliance reporting to a cognizant agency or other means of getting subject agencies and entities to examine their own compliance posture is required.
- Pre-Grant Review: Whether an examination of compliance with the civil rights law is required or permitted before the receipt of State funds or State licensure (e.g., accreditation).

- Periodic Compliance Review: Whether the agency periodically reviews documents from, or goes on site to, the subject agency or entity to determine its compliance with the civil rights law.
- Post-Enforcement Monitoring: Whether after some enforcement action has been taken, the agency does anything to assure continued compliance, or fidelity to a corrective plan, or monitors for the existence of retaliation against the complainant.
- Complaint and Investigation: Whether the agency receives complaints and conducts investigations of them.
- Informal Resolution: Whether informal attempts to resolve complaints are usually made before or during investigation but prior to other formal enforcement proceedings.
- Mediation: Whether attempts to obtain agreement between parties regarding the resolution of a complaint, usually resulting in an enforceable mediation agreement, are required prior to the commencement of formal enforcement proceedings.
- Formal Hearing: The existence of a formal hearing requirement is nearly universally coexistent with agency power to order relief. The absence of a formal hearing requirement frequently indicates that, failing conciliation or mediation, the matter must go to a court.
- Subpoena Power: Whether the agency has the power to require the attendance of persons involved in the complaint, secure documents, etc.
- Power to Litigate: Whether the agency is empowered to go to court to remedy a complaint or to enforce one if its administrative orders.
- Grant Suspension or Termination: Whether the agency is empowered to order or recommend to the relevant program agency the termination of funds to the offending recipient.
- License Suspension or Termination: Whether the State agency is empowered to recommend the revocation of formal permission to operate, such as accreditation in the case of schools.
- Deferral of Funding or License: Whether the agency could preclude the flow of new funding or the granting of permission to operate to the offending agency or entity.
- Civil Penalty: Whether the agency could, without bringing a criminal action, levy, or obtain judicially a fine separate from any compensatory damages to which an individual might be entitled.
- Criminal Penalty: Whether fines could be imposed under a criminal statute.

Footnotes to the Table

At the end of the summary table is an extensive set of footnotes. As is always the case with a table of this type, much of the richness and diversity of the information is lost by the uniformity of format. These footnotes are included to replace some of this richness, as well as to point out significant variations and particular aspects of interest not revealed by the symbols.

Table A1

STATE CIVIL RIGHTS LAWS AND ENFORCEMENT MECHANISMS GOVERNING STATE FUNDED SERVICES AND FACILITIES

	State Law Authority			Classifications Covered						State Program Inclusions or Applications										Enforcement Agency			Enforcement Mechanisms and Procedures															
										Scope of Title VI-type Authority					Limitations on State Law Authority																							
State	Specific Title VII-type Statute	Arguable Authority	State Enforce. Program	Race	National Origin	Color	Religion*	Handicap	Sex	Subgrantees	Facility Siting	Private Use of Public Facility	Affirmative Action	Local Government Grantees	State Agency Grantees	Private Grantees	Federal Grant to Local Government	Federal Grant to State Agency	Federal Grant to Private Grantee	Human Rights Agency	Attorney General	Program Agency	Record Keeping	Self-monitoring	Pre-grant Review	Periodic Compliance Review	Post-enforcement Monitoring	Complaint and Investigation	Informal Conciliation	Formal Mediation	Formal Hearing	Subpoena Power	Power to Litigate	Grant Susp'n/Term'n	License Susp'n/Term'n	Blacklisting	Civil Penalty	Criminal Penalty
Alabama	0	R[1]	0	0	0	0	0	X	0	0	0	0	0	R[1]	R[1]	0	0	0	0	0	0	X	0	0	0	-	-	-	-	-	-	-	R[2]	0	0	0	0	R[3]
Alaska	X[4]	PA	X	X	X	X	X	0	X	X	X	X	X	X	X	X	X	X	X	X	0	0	0	X	0	0	X	X	X	0	X	X	0	X	X	X	P	X
Arizona	0	PA	0	X	X	X	X	0	0	0	X	0	X	X	X	0	U	U	0	0	X	0	0	0	0	0	X	X	X	0	X	-	X	0	0	0	1	0
Arkansas	0	0	0	Not Applicable																																		
California	X[5]	-	X	X	X	X	X	X	X	AN	AN	AN	AN	X	X	X	0	0	0	0	0	X[6]	AN	AN	AN	AN	AN	X	AN	AN	X	X	AN	X	AN	AN	-	-
Colorado	0	PA	X	X	X	X	X	X	X	X	0	0	X	X	X	X	X	X	X	X	0	0	0	0	0	0	0	X	X	X	X	-	0	0	0	0	X	X
Connecticut	X[7]	PA	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	0	0	S	R[8]	R[9]	X	X	X	X	X	X	X	0	X	X	X	P	X
Delaware	X[10]	PA	X	X	X	X	X	X	X	0	0	X	0	X	X	X	0	0	0	X	0	0	0	0	0	0	X	X	0	X	X	X	X[11]	0	0	0	0	0
Florida	0	0	F[12]	Not Applicable																																		
Georgia	0	0	0	Not Applicable																																		
Hawaii	0	0		Not Applicable																																		
Idaho	0	PA[13]		X	X	X	X	0	X	0	X	0	X	J	J	J	0	0	0	X	0	0	0	0	0	0	X	X	X	X	X	0	U[14]	0	0	0	1	0
Illinois	0	PA,R[15]	0	X	X	X	X	X	X	U	R[16]	X	0	0	0	X	0	0	0	0	X	X	0	0	X	0	0	X	0	0	0	-	X	0	0	0	X	X
Indiana	0	R[17]	0	X	X	X	X	X	X	U	X	0	X	J	J	J	J	0	0	X[18]	0	0	X	0	0	0	X	X	X	0	X	X	R[19]	0	X	0	X	0
Iowa	0	X[20]	0	X	X	X	X	X	X	0	X	0	X	J	J	J	0	0	0	X	0	0	0	0	X	X	X	X	X	X	X	X	R[19]	0	X	0	0	0
Kansas	0	PA[21]	-	X	X	X	X	X	X	0	0	0	X	0	0	X	0	0	0	X	0	0	0	0	0	0	X	X	X	0	X	X	R[19]	0	0	0	P	X

*Although included here for the sake of completeness, it should be noted that OCR does not have jurisdiction over discrimination based on religion.

Table A1 (Continued)

State	State Law Authority			Classifications Covered						State Program Inclusions or Applications										Enforcement Agency			Enforcement Mechanisms and Procedures															
										Scope of Title VI-type Authority					Limitations on State Law Authority																							
State	Specific Title VII-type Statute	Arguable Authority	State Enforce. Program	Race	National Origin	Color	Religion *	Handicap	Sex	Subgrantees	Facility Siting	Private Use of Public Facility	Affirmative Action	Local Government Grantees	State Agency Grantees	Private Grantees	Federal Grant to Local Government	Federal Grant to State Agency	Federal Grant to Private Grantee	Human Rights Agency	Attorney General	Program Agency	Record Keeping	Self-monitoring	Pre-grant Review	Periodic Compliance Review	Post-enforcement Monitoring	Complaint and Investigation	Informal Conciliation	Formal Mediation	Formal Hearing	Subpoena Power	Power to Litigate	Grant Susp'n/Term'n	License Susp'n/Term'n	Blacklisting	Civil Penalty	Criminal Penalty
Kentucky	0	PA	0	X	X	X	X	0	X	0	0	0	X	J	J	J	0	0	0	X	0	0	X	U	0	0	X	X	0	X	X	X	0	U[22]	0	*	0	0
Louisiana	0	0	0	Not Applicable																																		
Maine	0	PA	0	X	X	X	X	X	X	0	X	0	0	J	J	J	0	0	0	X	0	0	0	0	0	0	X	X	X	X	0	-	0	0	0	0	P	0
Maryland	0	0	0	Not Applicable																																		
Massachusetts	X	-	X	X	X	X	X	X	X	X	X	0	X	X	X	X	X	X	X	0	0	X	X	X	X	X	X	X	X	X	X	X	0	X	0	0	P	X
Michigan	X[23]	-	X	X	X	X	X	X	X	X	X	X	X	X	X	X	R[24]	R[24]	R[24]	X[25]	0	X[26]	X	X	A[27]	X[27]	X	X	0	X	X	0	X[28]	X[29]	X	X	P	0
Minnesota	X[30]	-	X	X	X	X	X	X	X	X	X	X	U	X	X	X	0	0	0	0	0	0	0	0	0	0	U	X	X	X	X	X	0	U	X	0	P	X
Mississippi	0	0	0	Not Applicable																																		
Missouri	0	PA[31]	0	X	X	X	X	X	X	0	X	0	X	J	J	J	0	0	0	X	0	0	0	0	0	0	X	X	X	0	X	X	R[19]	0	0	0	P	X
Montana	X[32]	-	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		0	R[33]	*	*	0	0	X	X	X	X	X	X	R[34]	X	X	X	0	X
Nebraska	0	PA[35]	0	X	X	X	X	X	0	0	0	0	0	J	J	J	0	0	0	X[18]	0	0	0	0	0	0	U	X	X	X	X	X	0	0	0	0	0	X
Nevada	0	PA[36]	0	X	X	X	X	X	0	0	0	0	0	J	J	J	0	0	0	X	0	0	0	0	0	0	X	X	X	X	X	X	0	0	X	0	0	X
New Hampshire	0	PA[37]	0	X	X	X	X	X	X	0	0	0	X	J	J	J	0	0	0	X	0	X[37]	0	0	0	0	X	X	X	0	X	X	R[38]	0	0	0	0	X
New Jersey	0	PA	P	X	X	X	X	X	X	0	X	0	X	0	0	X	0	0	0	X[39]	X[39]	R[40]	0	0	0	0	X	X	0	X	X	X	R[41]	0	X	0	0	R[41]
New Mexico	0	PA	0	X	X	X	X	X	X	0	0	0	X	J	J	J	0	0	0	X	0	0	0	0	0	0	X	X	X	0	X	X	*	0	0	0	0	0
New York	X[42]	-	X	X	X	X	X	X	X	X	0	X[43]	0	X	X	X	0[44]	0[44]	0[44]	X	0	0	0	0	0	0	X	X	0	X	X	X	X	0	0	0	0	X

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*Although included here for the sake of completeness, it should be noted that OCR does not have jurisdiction over discrimination based on religion.

Table A1 (Continued)

	State Law Authority			Classifications Covered						State Program Inclusions or Applications										Enforcement Agency			Enforcement Mechanisms and Procedures															
										Scope of Title VI-type Authority					Limitations on State Law Authority																							
State	Specific Title VII-type Statute	Arguable Authority	State Enforce. Program	Race	National Origin	Color	Religion*	Handicap	Sex	Subgrantees	Facility Siting	Private Use of Public Facility	Affirmative Action	Local Government Grantees	State Agency Grantees	Private Grantees	Federal Grant to Local Government	Federal Grant to State Agency	Federal Grant to Private Grantee	Human Rights Agency	Attorney General	Program Agency	Record Keeping	Self-monitoring	Pre-grant Review	Periodic Compliance Review	Post-enforcement Monitoring	Complaint and Investigation	Informal Conciliation	Formal Mediation	Formal Hearing	Subpoena Power	Power to Litigate	Grant Susp'n/TErm'n	License Susp'n/Term'n	Blacklisting	Civil Penalty	Criminal Penalty
North Carolina	0	0	0	Not Applicable																																		
North Dakota	0	45 U	0	Not Applicable																																		
Ohio	0	46 RPA	47 NF	X	X	X	X	X	X	0	X	0	X	0	0	46 R	0	0	0	X	0	0	0	0	0	0	X	X	X	0	X	X	19 R	0	-	0	0	X
Oklahoma	0	48 X	48 X	X	X	X	X	0	U	X	X	0	X	J	J	J	0	0	0	X	0	0	0	X	0	0	X	X	X	0	X	X	X	X	U	X	0	U
Oregon	0	49 PA	0	X	X	X	X	X	X	0	X	0	X	J	J	J	0	0	0	0	0	X	0	0	0	0	0	X	0	X	X	-	50 R	0	X	0	0	U
Pennsylvania	0	51 PA,X	0	X	X	X	X	X	X	X	X	X	X	J	J	J	0	0	0	X	0	U	0	0	0	0	X	X	X	0	X	X	19 R	0	X	0	0	X
Rhode Island	0	PA	0	X	X	X	X	0	0	0	X	0	X	J	J	J	0	0	0	X	0	0	0	0	0	0	X	X	X	0	X	X	19 R	0	X	0	0	0
South Carolina	0	0	0	Not Applicable																																		
South Dakota	0	52 PA,X	0	X	X	X	X	X	X	0	X	0	X	J	J	J	0	0	0	X	0	0	0	0	0	0	X	X	X	X	X	X	19 R	U	0	U	0	0
Tennessee	0	PA	0	X	X	X	X	53 0	X	0	0	0	X	J	J	J	0	0	0	X	0	0	0	0	0	X	X	X	X	X	X	X	19 R	0	0	0	0	X
Texas	54 X	-	55 0	X	X	X	X	X	X	-	-	-	-	X	X	0	0	0	0	55 0	55 0	55 0	-	-	-	-	-	X	-	-	X	-	-	-	-	-	0	X
Utah	0	56 X,PA	0	X	X	X	X	X	X	0	0	X	0	0	0	0	0	0	0	0	X	0	0	0	0	0	0	X	X	0	0	-	X	0	0	0	0	57 R
Vermont	0	PA	0	X	X	X	X	0	0	0	X	X	X	J	J	J	U	U	U	0	X	0	0	0	0	X	X	X	X	0	0	-	X	0	0	0	X	0
Virginia	0	0	0	Not Applicable																																		
Washington	0	58 PA	0	X	X	X	X	0	0	X	X	X	X	X	X	X	X	X	X	X	0	59 R	0	0	0	0	X	X	X	X	X	-	19 R	0	0	0	0	X
West Virginia	0	60 PA	0	X	X	X	X	61 R	X	0	X	0	X	J	J	J	0	0	0	18 X	0	0	0	0	0	0	X	X	X	X	X	X	19 R	X	X	0	0	X
Wisconsin	62 R	PA	X	X	X	X	X	63 R	63 R	63 R	63 R	63 R	63 R	63 R	63 R	63 R	64 R	64 R	64 R	65 X	0	66 X	63 R	63 R	63 R	63 R	X	X	0	X	X	X	67 R	R	X	R	0	68 R
Wyoming	69 R	PA	U	X	70 X	X	X	0	71 X	U	U	U	U	U	U	U	U	U	U	U	U	X	X	U	U	U	U	X	U	U	X	U	U	U	U	U	U	72 X

*Although included here for the sake of completeness, it should be noted that OCR does not have jurisdiction over discrimination based on religion.

Key to Table Symbols

X = Yes

R = Yes with Restrictions

0 = No

G = General law prohibiting discrimination

PA = Public Accommodations statute

P = Punitive damages may be sought

A = Allowed, but not required, under statute

N = New law, regulations not yet promulgated

S = Applies only to State agencies

F = Formal State law authority for enforcement of Federal law

U = Unclear or uncertain application

J = Subject to jurisdiction of relevant State laws, but not as grantees per se

Footnotes to Table A-1

1. Two statutes limit protection to certain handicapped persons in places of public accommodation and in access to buildings financed by public funds.

2. State fire marshal may order compliance with public building statute and seek judicial enforcement of the order.

3. Violation of the public accommodations statute is a misdemeanor.

4. Statute prohibiting discrimination by State government branches and subdivisions interpreted by Alaska Human Rights Commission to apply wherever State funds or Federal funds channeled through the State are appropriated.

5. California passed in 1977 a statute with language virtually identical to that of Title VI, CRA, applying to programs receiving State financial assistance.

6. State agencies entering into contracts for performance of public services exceeding a total of $100,000 per year must promulgate implementing regulations.

7. Connecticut authority includes an Executive Order and a contract compliance statute, plus a public accommodations statute. Together they provide that no State facility shall be used in furtherance of any discriminatory practice, the State shall not become party to

any agreement or plan which sanctions any discriminatory practice and every State contract may not result in discriminatory practices. Specific provisions apply to education programs and the allocation of State benefits generally.

8. Some information is required by persons entering into contracts with the State.

9. The state uses the federally required A-95 review in this regard.

10. Specific authority granted under Executive Order #55 (1978) which proscribes discrimination in any service or facility supplied by a State agency.

11. Program agencies may go to court to seek a contempt order if its administrative orders are disregarded.

12. State regulations have been promulgated to establish a "uniform procedure for administering Title VI of the Civil Rights Act" by the Department of Health and Rehabilitation Services.

13. The public accommodations statute precludes the denial of full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation. Such places are broadly construed and educational institutions are explicitly included.

14. Agencies' power to litigate is presently at issue in a pending court suit.

15. A State law and its accompanying regulations empower the State educational agency to take action to eliminate segregation in public schools as defined by racial compositions.

16. Explicitly covered in the school segregation statute; uncertain as to the general statute.

17. Public contracts statute apparently limited to employment issues; public accommodations statute includes at least health care facilities.

18. Local human rights commissions, if established, have concurrent authority with the State commission.

19. Right to go to court limited to defense of appeals or to seek enforcement of administrative orders issued.

20. Executive Order 15 is a policy statement of affirmative action among State agencies and applies to contractors, suppliers, vendors, etc., contracting with the State. We could not determine whether the public accommodations statute would provide additional authority.

21. The public accommodations statute defines "unlawful discriminatory practice" to include provision of services, privileges and advantages of any institution, department or agency of the State or any political subdivision or municipality. The statute applies to health care facilities, but is limited to admissions to educational institutions.

22. Grant suspension sanction may be available under general rules pertaining to public contracts.

23. The general civil rights statute covers education, public accommodations, and public service. Executive Directive 1975-6 prohibits discrimination in any state funding. A 1976 act extended similar protections to handicapped persons.

24. The State law would apply only in cases of Federal grants which are distributed by State agencies. For direct grants, the State Department of Civil Rights would become involved if a complaint were filed under State law.

25. Enforcement actions are initiated by the Department of Civil Rights, although the initial litigation is conducted by the attorney general.

26. Sixteen granting agencies assume identification and surveillance responsibilities in support of the Department of Civil Rights' primary enforcement authority.

27. Some agencies have promulgated rules requiring pre-grant review in conjunction with the compliance review required at the time of grant renewal.

28. The Department of Civil Rights may seek to enforce hearing orders through the circuit court. These actions must be brought by the attorney general, however.

29. Only the granting agency is empowered to actually suspend the grant, but such is properly a recommendation of the Department of Civil Rights.

30. The Public Services statute prohibits discrimination in access or admission to, full utilization of, or benefit from, any public service.

31. A formal attorney general opinion held the public accommodations statute to apply to educational institutions.

32. The Human Rights Act prohibits discrimination by the State or its subdivisions in the provision of local, State or Federal funds, services, goods, facilities, or privileges; proscribes discrimination in public accommodations, makes it unlawful for educational

institutions to discriminate in admissions, permits reverse discrimination to correct prior discrimination, prohibits discrimination in the performance of services or use of facilities by state or local agencies, and prohibits discrimination in the distribution of state or local funds. These distinctions may be justified given "reasonable grounds" but the burden is on the defendant to demonstrate that the grounds are reasonable.

33. The statute requires program agencies not to permit violations of the statute to occur and requires self-policing by State and local agencies.

34. Criminal actions must be referred to a county attorney or the attorney general. Civil actions may be brought only by individual complainants.

35. Statute expressly includes health and welfare facilities. Thus educational facilities are probably not included.

36. Public accommodations statute provides that all goods, services, facilities, privileges, advantages, and accommodations be provided without discrimination. The statute would apply to health, education, and welfare facilities.

37. A new State statute proscribes discrimination in the schools, but implementing regulations have not yet been promulgated. Enforcement responsibility is given to local school districts, no central control by the State agency is provided for.

38. The Commission for Human Rights may only proceed to court to defend or enforce an order. The agency may recommend that the attorney general take action in a particular case.

39. Enforcement powers are statutorily conferred upon the attorney general and statutorily delegated to the Division on Civil Rights. This authority may also be delegated by the attorney general to a municipal office of civil rights for cities of at least 200,000 in population.

40. The Commissioner of Education may initiate complaints.

41. Criminal actions may be brought by the attorney general for impeding an investigation or willful violation of a division order. The division may go to court only to defend an administrative action on appeal.

42. Executive law Art. 15; Governor's Executive Order 45 apply broadly to prohibit discrimination; funding and grant programs are encompassed.

43. Limited to private users who can be considered to be engaged in commerce.

44. Pending legislation would include these in its scope.

45. Criminal liability exists for discrimination in "public places" or for interfering with one exercising or about to exercise his/her civil rights.

46. Statute probably applies only to noncharitable health care facilities and profit-making educational institutions.

47. A State law recently enacted required the Civil Rights Commission to examine all State efforts to enforce Title VI, CRA, with the intent of developing a comprehensive monitoring system.

48. The public accommodations statute applies to health, education, and all other State funded facilities, whether funded directly or indirectly. It provides that discrimination is prohibited in services, facilities, privileges, and advantages, inter alia. Another statute provides for the termination of public contracts upon certification by the Human Rights Commission that a discriminatory practice exists.

49. The public accommodations statute is at least broad enough to encompass health care facilities. A separate statute covers trade, vocational, and professional schools.

50. The agencies may initiate action in the case of willful obstruction, a misdemeanor; otherwise the agency may proceed to court only to enforce or defend an appeal.

51. The public accommodations statute applies expressly to health care facilities and educational institutions and other State and local entities. A separate statute prohibits any kind of discrimination against students of the protected classes.

52. The State's public accommodations law covers private health facilities; the public service law covers public health care facilities, and a separate law addresses discrimination in education.

53. Legislation is pending to add the handicapped to the list of protected classes under the public accommodations law.

54. A State nondiscrimination statute for public officials includes the use of public facilities or participation in a program owned, operated, or managed by or on behalf of the State or a political subdivision, the granting of benefits and the letting of bids. A separate public facilities statute provides similar protections to handicapped persons and specifically includes educational institutions.

55. There is no centralized State enforcement program; rather the statutes are enforced locally by district attorneys or political subdivisions which have established agencies for that purpose. Local rules were not examined in this study.

56. The public accommodations statute covers any facility that charges the public a fee for its use, receives any substantial government subsidy or support, or is an enterprise regulated by the State. It is unsettled whether government facilities are subject to the statute. A separate statute protects handicapped persons in their use of public places. Other minor statutes exist.

57. Criminal penalties only under the statute protecting the handicapped in their use of public places. See footnote 56.

58. Several statutes contain nondiscrimination provisions and some may apply to grants or State funded services. Executive orders have been issued prohibiting discrimination in state grants but these are of questionable enforceability. The public accommodations statute is defined broadly to include hospitals and schools.

59. Various agencies have nondiscrimination provisions in statutes they enforce and thus may have independent enforcement authority.

60. The public accommodations statute probably applies to health, education, and welfare-related facilities and services, but we could not determine this with certainty.

61. Only blindness is covered by the statute--not other handicaps.

62. The State's Pupil Discrimination Law provides the Title VI type authority. Obviously it does not cover health or welfare.

63. Covered or included in the pupil discrimination statute but not in the public accommodations statute.

64. Covered by the pupil discrimination statute (but not the public accommodations statute) only if the State educational agency redistributes the funds.

65. The Equal Rights Division enforces the public accommodations law.

66. The Department of Public Instruction enforces the pupil discrimination law.

67. The Department of Public Instruction may go to court to defend or enforce its orders under the pupil discrimination law. The Equal Rights Division may refer a case to a local district attorney for criminal prosecution.

68. Criminal penalties available only under the public accommodations law. See footnote 67.

69. Title VI-type authority exists only as regards health care facilities.

70. Not included in the public schools statute.

71. Not included in the medical assistance or public places statutes.

72. Criminal penalties available only for the public places statute and the general nondiscrimination statute.